1237-

SUPREME COURT OF THE UNITED STATES.

No. 133.

THE WIDOW COLLARD, PLAINTIFF IN ERROR,

vs.

FELIX GRIMA & AL.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

INDEX.

	Original.	Print.
Account rendered by Felix Grima of the situation of the succession (in French)	1	2
Petition praying for homologation of account	22	16
Orders	24	17
Opposition of Widow Collard	24	18
Statement of facts agreed	25	18
Judgment of court of probates	28	20
Petition of appeal	37	24
Appeal granted	38	25
Appeal bond	38	25
Agreement	40	25
Certificate register of will	40	26
" of parish judge	41	26
Proceedings in Supreme Court	42	26
Argument of case	43	27
Opinion of court	44	28
Judgment of Supreme Court	51	31
Petition for writ of error	51	31
Bond to prosecute writ of error	52	31
Certificates of clerk and judge	54	32
Citation	56	33
Service of citation	57	33

J. & G. S. Gideon, printers.

Succession Account.

Compte-rendu, par Félix Grima, de la situation de la succession.

Actif de la dite succession.

L'actif de la succession de feu J. Mager, ainsi que le tout est plus amplement détaillé dans l'inventaire fait par Mr. L. T. Caire, notaire, les 3, 4, 5, et 8 Mars, 1845, et dans l'inventaire supplémentaire fait par le même notaire le 28 Avril, 1845, consiste en ce qui suit:

Effets mobiliers.

Montant estimatif des meubles et effets mobiliers dépendant de la dite succession, consistant en meubles meublans, linge de corps et de ménage contenu dans la cave, livres, et autres effets, tel que le tout est détaillé dans l'inventaire, à la date du quatre Mars, 1845, et est resté à la charge de l'exécuteur testamentaire, mille quarante-neuf piastres 25 cts. - - - - -		$1,049 25
Montant estimatif de l'argenterie, pésant deux cent quarante-huit onces, inventorié à la même date, et aussi invendu, deux cent quarante-huit piastres - -		248 00
Montant estimatif des objets mobiliers, omis dans le premier inventaire, et estimés dans l'inventaire supplémentaire en date du 28 Avril, lesquels objets consistent en deux vaches, un vieux cheval, un vieux cabriolet, un tombereau, et un dray, et sont aussi invendus, cent piastres		100 00
Sommes trouvées chez le défunt lors de l'inventaire et restées à la charge de l'exécuteur testamentaire, montant en pièces d'or, ainsi que le tout est détaillé dans l'inventaire à la date du quatre Mars dernier, trois mille six cents piastres et 93 cts. - - - - -		3,600 93
Montant en argent, ainsi que tout est détaillé dans le dit		
Transporté en l'autre part -	$	
Transport - - -	$	
inventaire à la même date, seize mille cent vingt-neuf piastres 87 cts. - - - - - -		16,129 87
Montant en billets de diverses banques locales payant en espèces, et inventoriés à la même date, sept cent soixante-cinq piastres - - - - - - -		765 00
Deux billets de dix piastres chaque, et deux de cinq piastres chaque, de la Banque Consolidée, restés en nature à la charge du dit exécuteur testamentaire: total trente piastres. Les billets, perdant maintenant quinze pour cent d'escompte, représentent un valeur de vingt-cinq piastres et 50 cts. - - - - - -		25 50
Montant en petite monnaie et en un doublon, omis dans le premier inventaire, et inventorié le premier Avril, soixante-quinze piastres 50 cts. - - -		75 50

Testamentary Account.

Executeur testamentaire de feu Jean Mager, du dit Jean Mager, et de son administration en sa qualité.

Passif.

Dettes existantes au décès de Mr. J. Mager:	
A la chambre d'assurance des négociants pour assurances diverses, du 1st November, 1844, au 8 Fevrier, 1845, trois cent quarter-vingt-dix-huit piastres, et quatre-vingt-quatorze cents, suivant pièce l'appui No. 1, ci -	$398 94
A Mess'rs Jenkins & Tigler, vingt-cinq piastres, 33 cts., No. 2 - - - - - - -	25 33
A Mr. J. H. Herase, commis du défunt pour la balance de ses emolumens jusqu'au 28 Fevrier, 1845, suivant les livres du défunt, cent trente-trois piastres et 30 cts. -	133 30
A la presse à Coton de Wood, quinze piastres et 15 cts., No. 3 - - - - - - -	15 15
A la presse à Coton de l'Union, une piastre et 80 cts., No. 4	1 80
A la presse à Coton des Planteurs, vingt-huit piastres, No. 5	28 00
A la presse d'Orleans, dite Feelman's press, cent trente-trois piastres, No. 6 - - - - -	133 00
A la presse R. Fergussun, soixante-dix-sept piastres et 56 cts., No. 7 - - - - - - -	77 56
A la presse de la Levée, cent quarante-huit piastres et 95 cts., No. 8 - - - - - - -	148 95
Frais de dernière maladie:	
Au Dr. J. Labatut, pour soins et traitements, pendant toute la dernière maladie du défunt du 29 Dec., 1844, au 24 Fev'r, 1845, mille piastres, No. 9 - -	1,000 00
La réclamation du Dr. F. Formente, pour soins et traitement du 7 au 24 Fevrier, est de dix-huit cents piastres et n'est point admise pour cette somme - -	
Au Doct'r W. Guenard, pour consultation, dix piastres, No. 10 - - - - - - -	10 00
Transporté en l'autre part -	$$
Transport - - - -	
Au Doct'r N. Lambert, pour consultation, dix piastres, No. 11 - - - - - - -	10 00
Frais funéraires:	
A la fabrique de l'Eglise St. Louis, pour funérailles et prix de deux emplacemens au cimetière Catholique pour la tombe, deux cent quatre-vingt-dix piastres, pièce à l'appui No. 12 - - - - - - -	290 00
A P. A. Dupin, pour un cercueil en plomb, quarante piastres, No. 13 - - - - - - -	40 00
A Jh. Fernandez, pour un cercueil en acajon, et plaque	

Montant en dépôt à la Banque de la Lousiane, au décès du défunt, par dépôt spécial, et en compte courant; montant d'un dépôt spécial de billets de la Banque des Citoyens de la Louisiane, contenus dans une enveloppe de papier scellé, marquée Jean Mager, déposés à la Banque de la Louisiane le onze Février, 1845, lesquels billets, détaillés dans l'inventaire à la date du 4 Mars, forment une somme de vingt-et-un cent quatre-vingt-cinq piastres, et sont restés en nature à la charge de l'exécuteur testamentaire, qui en a fait un dépôt spécial à la même banque au nom de la dite succession. Ces billets, estimés à raison d'un escompte de douze pr. ct. dans le dit inventaire, y représentent une somme de dix-huit mille six cent quarante-deux piastres et 80 cts. -	$18,642 80	
Montant d'un dépôt au crédit du défunt, suivant son livret de banque, en compte courant avec la dite Banque de la Louisiane, balancé à la requête de l'exécuteur		
Transporté en l'autre part -		
Transport - - - -		
testamentaire; lequel montant figure dans l'inventaire à la date du quatre Mars, et s'élève, y compris le contenu de trois petits barils et une caisse d'argent, spécialemente déposés le onze Février, et comptés lors de l'inventaire, à la somme totale de cinquante-neuf mille quatre cent soixante-cinq piastres et 97 cts. - - - -	59,465 97	
Valeurs trouvées chez le défunt lors de l'inventaire, énumérées dans le dit inventaire à la date du quatre Mars, et encaissées depuis par l'exécuteur testamentaire:		
Un check de S. B. Planché sur la Banque de la Louisiane, de la somme de cent sept piastres et 49 cts. - -	107 49	
Un check de Robt. D. Urquhart, sur la Banque des Artisans, de la somme de deux mille piastres - -	2,000 00	
Un check de W. C. Figler sur la Banque de la Louisiane, de la somme de cent soixante-seize piastres vingt-un cts.	176 21	
Un check de Flower & Co. sur la Banque de Cité, de la somme de deux cent neuf piastres et soixante-quinze cents - - - - - - - - -	209 75	
Autre valeur, inventoriée à la date du 8 Mars, et encaissée depuis par l'exécuteur testamentaire:		
Un billet de Messrs. A. & Z. Cavelier, pr. J. Mager, de la somme de quinze cents piastres, daté le 7 Septembre, 1844, et payable à six mois de date, lequel billet a été encaissé par l'exécuteur testamentaire - - -	1,500 00	
Autre valeur, inventoriée à la date du 8 Mars, et restée à la charge de l'exécuteur testamentaire, et non échue:		

noir, catapalque et corbillard, cent trente-cinq piastres, No. 14		$135 00
A. J. Brunetti, pour cierges, trente-deux piastres, No. 15.		35 00
A. M'e S. Dumay, pour crepe pour l'enterrement, vingt-cinq piastres, No. 16		25 00
A. Zabelle Dauphin, quinze piastres, No. 17		15 00
Frais de voitures pour les funérailles, trente-cinq piastres, No. 18		35 00
Au bureau d'enrégistrement des décès pour déclaration de décès et certificat de décès delivré, deux piastres y cinquante cents, No. 19		2 50
A Newton Richards et Jacques Demourelles, pour une tombe en granit, marbre, et inscription, et grillage en fer placé sur granit, douze cents piastres, No. 20		1,200 00
Autres frais:		
A l'imprimerie du Courrier, pour impression de billets d'enterrement, annonces du décès, et pour publication d'avis aux créanciers, suivant la loi de présenter à l'ex'r testam'e leurs titres de créances, quarante-quatre piastres No. 21		44 00
Transporté en l'autre part	$ ¢	
Transport	$ ¢	
A l'imprimerie de l'Abeille pour annonce du décès, et publication d'avis aux créanciers, six piastres, No. 22		6 00
Taxes sur propriétés et autres:		
Taxes d'etat pour l'anneé 1844, sui propriétés fouciéres et esclaves, soixante-dix-neuf piastres et 87 cts. pièce, à l'appui No. 23		79 87
Taxes de Paroisse, pour l'année 1844, sur propriétés fouciéres et esclaves, soixante-une piastres et cinquante cents, No. 24		61 50
Taxes de la Municipalité No. un, sur propriétés foncières et esclaves pour l'année 1844, cent quatre-vingt-dix-sept piastres et 50 cts., No. 25		197 50
Taxes de la Municipalité No. trois, pour l'année 1844, sur propriétés foncières et esclaves, cent quatre-vingt seize piastres, laquelle somme, payée en bons de la dite Municipalité à 23 p. c. d'escompte, représente la somme effective de cent cinquante piastres et 92 cts., No. 26		150 92
Taxes de la Municipalité No. un, imposée sur les négotiants, la somme de trente piastres, No. 27		30 00
Taxes d'Etat imposée sur les négociants, cinquante piastres, No. 28		50 00
Taxe arrierée, reclamée par la Municipalité No. 3, pour 1843, cinquante piastres, No. 29		50 00

Un mandat de la Municipalité No. un, signé par E. Montégut, maire de la Nouvelle Orléans, sur le trésorier de la dite Municipalité, contresigné par A. J. Guirot, con-	
Transporté en l'autre part -	$
Transport - - -	$
trôleur, et accepté par J. A. Durel, trésorier, daté le 6 Février, 1845, et payable à un an de date, de la somme de cinq mille piastres, portant intérêt à 8 p. c. l'an jusqu'au paiement - - - - - -	5,000 00
Montant de comptes divers dûs au défunt, et détaillés dans le dit inventaire à la date du 8 Mars, lesquels ont été encaissés depuis par le dit exécuteur testamentaire:	
De Mr. Ribisky, sept piastres - - - - -	7 00
Mr. Dumay, deux cent vingt-huit piastres et 50 cts.	228 50
Mr. Bignon, trente-une piastres et 25 cts. - -	31 25
Mr. P. A. Hébrard, deux cent vingt-huit piastres -	228 00
Mr. Rap'l Tolédano, quarante-une piastres 25 cts. -	41 25
Mr. Follain & Belloc, dix-sept piastres 50 cts. -	17 50
Mrs. Drouillet & Montamat, vingt-une piastres -	21 00
Mr. Charles Tolédano, sept piastres - - -	7 00
Messrs. Janin & Vallée, deux cent quatre-vingt-quinze piastres et 50 cts. - - - - - -	295 50
Mr. Larguier, à compte du montant porté à l'inventaire, quatre-vingts piastres - - -	80 00
Mr. Casimir Lacoste, cent quatre-vingt-sept piastres et 50 cts. - - - - - -	187 50
Sommes diverses reçues par le dit exécuteur testamentaire, pour compte des personnes ci-après nommées, dont le défunt était l'agent:	
Montant d'un billet de Marie Thérèze Duliet pr. J. Durand, de la somme de cinq cents piastres, daté le 19 Mars, 1844, à un an, laissé pour être recouvré par Mr. Goutnoir, au défunt, inventorié le 5 Mars, et mis en collection par le dit exécuteur testamentaire à la Banque de la Louisiane, où le billet a été payé et porté au crédit	
Transporté en l'autre part -	$
Transport - - -	$
de la dite succession - - - - - -	500 00
Montant reçu par l'exécuteur testamentaire á compte du capital plus les intérêts pour six mois pour balance d'un billet de L. Deloche de dix-huit cents piastres, daté le Avril, 1844, payable à six mois de date, et protesté à l'échéance; lequel billet inventorié à la date du cinq Mars appartient au Capitaine F. Demigué et a été laissé par lui au défunt pour être recouvré ou renouvelé faute	

Dépenses diverses:		
Compte de Mr. Derepa, serrurier, pour ouverture du coffre-fort lors de l'inventaire, et pour avoir fourni et posé à une porte du bureau, une serrure française, la somme de dix piastres, No. 30 - - - - -		10 00
Fraise de voiture pour Mr. Caire, et les appréciateurs lors de l'inventaire des propriétés, quatres piastres, No. 31		
Transporté en l'autre part -	$	
Transport - - -	$	
Compte pour frais d'entourage en pieux d'une portion de la propriété rue St. Bernard, ordonné par le défunt pendant sa maladie à J. D. Dolliole, cinquante-cinq piastres et soixante-deux ½ cts., No. 32 - - - -		55 62½
Au rédacteur des prix courants, six piastres, No. 33 -		6 00
Frais de port de lettres et affranchissement de lettres et paquets jusqu'à ce jour, trente-cinq piastres et dix cents		35 10
Frais au bureau de la chancellerie du consulat de France, pour diverses légalisations de documens envoyés à M'me Collard, vingt-quatre piastres - - - - -		24 00
Compte de Wm. Christy, pour copie d'une acte de vente par Gayané, frères, au défunt trois piastres, No. 34 -		3 00
H. J. Commeny, voyer pour plans et reseignements, vingt-cinq piastres, No. 35 - - - - - -		25 00
A la compagnie d'assurance des négociants pour assurance de deux maisons, No. 36 - - - - -		61 50
Dépenses pour maison, habillement et entretien des domestiques depuis le décès du défunt:		
A Daran, Queyrouse & Co., pour une caisse blanc de baleine, neuf piastres et quarante-cinq cents - -		9 45
Pour autres dépenses diverses de maison, pour habillemens de deuil pour les domestiques, leur nourriture et entretien depuis le décès du défunt jusqu'à ce jour, et pour leur entretien jusqu'à leur affranchissement, quatre-cents piastres - - - - - -		400 00
Sommes á rembourser par la succession et reçus tant par le défunt, que par l'exec'r testam'e pour compte de divers dont le défunt était l'agent:		
A rembourser á Mr. L. Bernard, pour autant reçu par le défunt pour compte de Mr. Louis Bernard, ainsi qu'il appert d'un compte particulier tenu pai le le défunt, et		
Transporté en l'autre part -	$	
Transport - - -	$	
balancé depuis son décès, la somme de dix-neuf cent quatre-vingt-onze piastres et 31 cts. - - -		1.991 31
A rembourser au dit Louis Bernard pour autant reçu pour		

Succession account—Continued.

de paiement à échéance, ainsi qu'il appert d'un pouvoir à cet effet, quatre cent vingt-cinq piastres - -	$425 00
Montant reçu par le dit exect'r testam'e de Palmyre pour compte de L. Bernard, en réglement du capital et interêts d'une obligation hypothécaire de la dite Palmyre Berguier en faveur du dit L. Bernard, de la somme de huit-cent cinquante piastres, daté le 9 Octobre, 1841, payable à un an de date, sur laquelle obligation laisseé au défunt par le dit Bernard pour être recouvrée il restait dû le 26 Avril, 1845, et d'aprés les comptes du défunt en capital et interêts huit-cent trente-huit piastres et 33 cts. - - - - - - - -	838 33
Loyers des propriétés dependant de la dite succession et perçus par le dit executeur testamentaire:	
Montant reçu de divers pour loyers de petites maisons, situées rue St. Claude, dus au défunt et reçus par l'executeur testamentaire, quatre vingt-quatorze piastres -	94 00
Montant reçu de Mr. Ch's Claiborne, pour loyer de la maison situeé à l'encoignure des rues du quartier et des ramparts; la somme de quarante piastres - -	40 00
Transporté en l'autre part -	$$
Transport - - - -	$$
Dividendes déclarés sur actions de Banque et autres, et reçus par l'ex'r testamentaire; dividendes déclarés par la Banque de Cité, les 28 Février, 31 Août, 1844, et 28 Fevrier, 1845, et reçus par l'ex'r testam'e, cent dix-sept piastres - - - - - - -	117 00
Dernier dividendes déclaré par la compagnie d'assurance des negociants, et reçu par le dit ex'r testam'e, vingt et une piastres et 60 cts. - - - - -	21 00
Intérêts du sur dépôt fait par l'ex'r testam'e à la Banque de Cite:	
Une somme de vingt-mille piastres des fonds appartenant à la dite succ'n a été deposeé par l'ex'r testam'e suivant la loi à Banque de Cité, qui paye d'aprés sa charte un intérêt de 3.65 p. ct. par an'm sur tous dépôts faits par chaque dépositaire et n'excedant par cette somme; cet intérêt du 1er Avril, 1845, au 1er Juin, cent vingt piastres - - - - - - - -	120 00
Actions de banque et autres actions, omis dans le 1r inventaire et inventoriées le 28 Avril:	
Treize actions de la Banque de Cité, estimées dans le dit inventaire à soixante-cinq piastres par action et restées invendues, formant la somme totale de huit-cent quarante-cinq piastres - - - - -	845 00

compte du dit Louis Bernard par le dit execut'r testam'e enrêglement du billet de Palmyra Berguir, porté ci-contre, la somme de huit-cent trente-huit piastres et 33 cts. - - - - - - - - $838 33

A rembourser à Mr. Goutnoir, pour autant reçu pour compte du dit Goutnoir par le dit exécuteur testamentaire en paiement du billet de Marie Thérèze Dulliet porté ci-contre, appartenant au dit Goutnoir, ainsi qu'il résulte des livres du défunt - - - - 500 00

A rembourser à Mr. F. Demigué, pour autant reçu pour un compte par le dit exécuteur testamentaire, à compte du billet de L. Deloche porté ci-contre, appartenant au dit F. Demigué ainsi qu'il résulte des livres du défunt, quatre cent vingt-cinq piastres - - - - 425 00

A rembourser à P. Chouteau, jr., pour autant reçu par le défunt pour compte du dit P. Chouteau de loyers de la negresse Aurore, appartenant au dit P. Chouteau, lesquels loyers perçus par le défunt du 7 Décembre, 1843, au 7 de Janvier, 1845, ainsi qu'il résulte des livres du défunt s'élevant à la somme de cent vingt-sept piastres et cinquante cents - - - - - - 127 50

Frais de justice:

A Mr. H. Pedesclaux, juge de la cour de cité, pour apposer et lever les scelles, la somme de huit piastres - 8 00

A Mr. W. F. C. Duplessis, greffiér des testamens, soixante-six piastres et 07 cts. - - - - 66 07

Transporté en l'autre part - $$

Transport - - - $$

A Mrs. Allard & Charbonnet, appreciateurs, quatre-vingt piastres - - - - - - 80 00

A Mr. L. T. Caire, notaire, pour avoir reçu deux testamens du défunt, fourné les copies, fait les inventaires et fourné les copies necessaires, six-cents piastres - - 600 00

A Mr. Martin Blache, avocat nommé par la cour pour représenter les héritiers absens du défunt, le montant de ses honoraires doit être alloué par le juge - - 600 00

Montant réservé par l'exe'r testam'e pour subvenir aux frais de publication et homologation du présent compte, et frais éventuels et relatifs, cent piastres - - 100 00

Montant des divers legs faits par le défunt. Legs faits en faveur de ses domestiques qui doivent être emancipés suivant ses dispositions testamentaires:

A la négresse Fanny, suivant testament olographe du défunt en date du vingt-sept Decembre, 1844, confirmé

Cinq actions de la compagnie d'assurance de l'ocean estimées dans le même: Inventaire à raison de quinze piastres par action, lesquells actions sont aussi restées invendues, formant la somme totale de soixante-quinze piastres - - -	$75 00
Douze actions de la compagnie d'assurance des négo- Transporté en l'autre part -	$ $
Transport - - - cients, estimées dans le dit inventaire à raison de quinze piastres par action, lesquelles actions sont aussi restées invendues, formant ensemble la somme totale de cent quatre-vingt piastres - - - - - - -	180 00
Propriétés foncières qui dépendent de la dite succession, inventoriées sous la date du cinq Mars, 1845, et restées à la charge de l'exe'r testam'e. Un lot de terre et maison à étaye, situé rue St. Louis, entre les rues Chartres et Levée, ayant trente pieds de face à la rue St. Louis, et cent vingt pieds de profondeur avec soixante onze actions de la Banque des Citoyens de la Louisiane, garantées par hypothèque sur cette propriété, le toute evalué dans l'inventaire à la somme de treize mille piastres - - - - - - -	13,000 00
Un lot de terre et une maison en briques et à étayes, situé rue de l'Esplanade, entre les rues Condé et Vieille Levée, ayant vingt sept pieds quatre pouces de face à la rue de l'Esplanade, sur quatre vingt onze pieds de profondeur, évalué dans le dit inventaire à la somme de cinq-mille piastres - - - - - - -	5000 00
Un lot de terre d'une forme irreguliére, situé rue St. Claude, attenant à une autre propriété dépendant de la dite succession, et léguée à Mr. S. Dumay, le dit lot de terre mesurant environ trente pieds de face à la rue St. Claude, et estimé dans l'inventaire à la somme de mille piastres - - - - - - - -	1000 00
Un portion de terre formant presque la totalité de l'ilet compris entre les rues de l'Esplanade, Planché, St. Claude, et St. Bernard, composée de divers lots de terre plus amplement décrits dans le dit inventaire, laquelle portion de Transporté en l'autre part -	$ $
Transport - - - terre ainsique cent trente sept actions du fond capital de la Banque de l'Union de la Louisiane, qui sont garanties par hypothèque sur la dite propriété et mentionnées pour mémoire dans l'inventaire en date du 28 Avril, est évaluée à	

par son testament olographe en date due quatre Fevrier, 1845, une somme de mille piastres - - -	$1000 00
A la même negresse Fanny, par le même testament le défunt a légué son lit et autant de chaises et de meubles qu'elle jugera nécessaries pour elle, à prendre dans ses appartemens. Les meubles du défunt sont restés invendus et leur estimation déduction faite des autres effets mobiliers compris dans l'inventaire s'eléve à deux-cents cinquante piastres; ces meubles doivent doné en vertue de cette disposition testamentaire rester à la charge de l'exe'r test'e, pour étre par lui délivrés suivant l'intention du tes-	
Transporté en l'autre part -	$
Transport - - -	$
tateur, et le montant de leur estimation doit étre déduit de l'actif de la dite succéssion - - - -	250 00
Eu faveur de la dite négresse Fanny, par son testament noncupatif par acte public, le testateur a laissé une somme de huit-mille piastres pour être employée par son exécuteur testam'e, de maniére à assurer à la dite négresse Fanny des moyens d'existence le reste de sa vie. Le capital de cette somme est par la même disposition legué après le décès de Fanny à l'Eglise Paroissiale St. Louis de la N'elle Orléans - - - - -	8000 00
A la même négresse Fanny, par le testament sus énoncé en date du douze Février, 1845, le défunt a légué en outre des dispositions déjà faites en faveur de la dite negresse, une somme de quatre-cents piastres - -	400 00
A la négresse Mélanie, par son testament olographe en date du 4 Janvier, 1845, le défunt a légué une somme de cinq cents piastres en meubles à son choix - -	500 00
A la dite négresse Mélanie, par son testament noncupatif par acte public à la date du onze Février, 1845, le défunt a en outre légué une somme de quatre-cents piastres en argent. Par cette même disposition une pareille somme de quatre-cents piastres est leguée par le défunt à chacun de ses domestiques - - - -	400 00
Aux trois enfans de la dite négresse Mélanie. Par suite de la même disposition testamentaire en faveur des dits domestiques, une somme de quatre-cents piastres est léguée par le défunt à chacun des enfans de Mélanie, nom-	
Transporté en l'autre part -	$
Transport - - -	$
més Paul, Hyacinthe, et Elizabeth. Total douze cents piastres - - - - - - -	1200 00

la somme de neuf mille piastres, les dites actions étant considérées comme n'y ajoutant nulle valeur - -	$9000 00
Une portion de terre formant l'encoignure des rues Planché et St. Bernard et composée de divers lots de terre plus amplement décrits dans le dit inventaire, le tout évalué à la somme de deux mille piastres - -	2000 00
Propriétés foncières leguées par le defunt:	
Une maison située rue St. Claude, designée dans le testament du défunt en date du onze Février, 1845, en vertu duquel la dite propriété est leguée à Me. Scholastique Dumay, comme étant la maison autrefois occupée par M'me Collard, sœur du défunt. Cette propriété est évaluée dans l'inventaire à la date du 5 Mars, 1845, à la somme de deux mille piastres - - - - -	2000 00
Une propriété située au faubourg Trémé, formant l'encoignure des rues Trémé et chemin du bayou, composée de deux lots de terre ayant ensemble quarante-cinq pieds de face au chemin du bayou, son environ quatre-vingts pieds de profondeur, laquelle propriété est estimée dans l'inventaire à la somme de quinze cents piastres -	1500 00
Un lot de terre et maison en briques et à étayes formant l'encoignure des rues de l'Esplanade et de la vieille levée	
Transporté en l'autre part -	96 96
Transport - - - -	
ayant vingt-huit pieds deux pouces de face à la rue de la vieille levée et soixante-dix pieds de profondeur, la dite propriété estimée dans l'inventaire à la somme de six-mille piastres - - - - - - - -	6000 00
Une proprieté située à l'encoignure des rues du quartier et des ramparts composée de trois lots de terre, mesurant ensemble au pied Anglais soixante-cinq pieds de face à la rue des ramparts sur cent trente cinq pieds de profondeur, avec les bâtisses, laquelle propriété est estimée dans le dit inventaire à la somme de trois mille piastres -	3,000 00
Montant total - - -	155,996 70

Observations.

Les esclaves du défunt, qui ont été estimés dans l'inventaire seulement pour mémoire, ayant été emancipés par le défunt en vertu de ses dispositions testamentaires, ne doivent point figurer à l'actif de la succession - -

Les couvertures de laine en magasin lors du décès de feu J. Mager ont été ainsi inventoriées pour mémoire.

A la négresse Marie, en vertu de la même disposition, pareille somme de quatre cents piastres - - -	$400 00
A la négresse Adélaïde, en vertu de la même disposition testamentaire, pareille somme de quatre cents piastres -	400 00
Au negre Offit, en vertu de la même disposition, pareille somme de quatre cents piastres - - -	400 00
Au mulâtre Charles Prosper, en vertu de la même disposition, pareille somme de quatre cents piastres - -	400 00
Au negre Charles Mathieu, en vertu de la même disposition, aussi pareille somme de quatre cents piastres -	400 00
Legs de sommes d'argents faits à divers:	
A Jean Louis Dolliole, h. c. l. domicilié à la Nouvelle Orléans, par son testament olographe en date du 4 Janvier, 1845, une somme de deux mille piastres en argent	2,000 00
A Me. Scholastique Dumay, f. c. l. domicilié à la N'elle Orléans, par le même testament olographe, la somme de mille piastres - - - - -	1,000 00
A Mme. Alphonse Bozameat, domicilié à la N'elle Orléans, par le même testament olographe, la somme de mille piastres - - - - - -	1,000 00
A Mr. J. H. Haass, domicilié à la N'elle Orléans, par le même testament olographe, une somme de cinq mille piastres - - - - - -	5,000 00
Au même J. H. Haass, par son testament noncupatif par acte public, en date du 12 Février, 1845, le défunt a légué une somme de quatre mille piastres - -	4,000 00
A Mr. Felix Grima, domicilié à la Nouvelle Orléans, Transporté en l'autre part - Transport - - -	$ $
par le testament olographe du defunt, en date du 4 Janvier, 1845, la somme de dix mille piastres - -	10,000 00
Aux pauvres de la paroisse d'Orleans, par son testament noncupatif, par act public, en date du douze Février, 1845, le defunt a legué une somme de cinq mille piastres pour étre distribuée aux pauvres par l'abbe Masuhant, cerré de la dite paroisse - - - -	5,000 00
Legs de proprietés foncières:	
A Me. Scholastique Dumay, f. c. l. domiciliée à la Nouvelle Orléans, par testament noncupatif, par acte public en date du douze Février, 1845, le défunt a légué la maison occupée rue St. Claude, et designé comme etant la maison autrefois occupée par Mme. Collard; cette proprieté est estimée dans l'inventaire à la somme de deux mille piastres - - - - -	2,000 00
A J. L. Dolliole, h. c. l. domicilié à la Nouvelle Orléans,	

Ces couvertures sont la propriété de Mr. Z. Gravier de Montpellier, par qui elles étaient consignées au défunt, ainsi qu'il résulte des livres de commerce du défunt et de ses comptes cour'ts avec Mr. Z. Gravier, et ne doivent point figurer à l'actif de la dite succession -	
Récapitulation.	
Valeur en effets mobiliers et argenterie - - -	$1,397 25
Transporté en l'autre part -	$
Transport - - -	$
Montant en argent consistent en sommes trouvées chez le défunt, dépot à la Banque de la Louisiane à sindicés et sommes recouvrées depuis par l'ex'r test'e - -	87,331 15
Valeur en billets de la Banque des Citoyens, montant à $21,185 en billets susdits évalués à un escompte de 12 p. c. - - - - - - - -	18,642 80
Valeur en quatre billets de la Banque Consolidée, montant à $34, en billets susdits évalués à un escompte de $15 p. c. - - - - - - -	25 50
Valeur en un mandat de la Municipalité No. 1, échéant le 9 Fev'r, 1846 - - - - -	5,000 00
Valeur en actions de banque et autres actions - -	1,100 00
Valeur en propriétés foncières et comprés les propriétés leguées - - - - - - -	42,500 00
Montant total - - -	155,996 70

par testament olographe, en date du quatre Janvier, 1845, la proprieté formant l'encoignure du chemin du bayou et de la rue Trémé, ce legs est confirmé par une même disposition du testament du défunt par acte public, en date du onze Février. Cette proprieté est estimée dans l'inventaire à la somme de quinze cents piastres - - - - - - - - -	$1,500 00
A Mr. F. Grima, domicilié à la Nouvelle Orléans, par testament par acte public en date du onze Février, 1845, la proprieté située à l'encoignure des rues de l'esplanade et de la vielle levée, estimée dans l'inventaire à six mille piastres - - - - - - -	6,000 00
A la négresse Fanny, par testament noncupatif, par acte public en date du onze Fevrier, 1845, le défunt a légué	
Transporté en l'autre part -	$
Transporté - - -	$
la proprieté située à l'encoignure du quartier et des ramparts, estimée dans le dit inventaire à trois mille piastres	3,000 00
Montant total - - -	64,046 20½

Observation.—L'exécuteur testamentaire, étant légataire du défunt, n'a droit à aucune commission, suivant l'art. 1679 du code civil de la Louisiane.

Récapitulation.

Dettes existantes au décès du défunt par comptes divers -	$962 03
Frais de dernière maladie non compris la réclamation du Dr. Formento - - - - - - - -	1,020 00
Frais funéraires et autres frais relatifs au décès - -	1,824 50
Taxes diverses - - - - - - -	619 79
Dépenses diverses, et habillement et entretien des esclaves	633 67½
Sommes reçues pour divers dont le défunt était l'agent, et à rembourser - - - - - - -	3,882 14
Frais de justice, non compris les honoraires de Mr. Blache, avocat nommé pour représenter les héritiers absens -	854 07
Montant des legs en meubles légués et en sommes d'argent - - - - - - - -	41,750 00
Montant des legs en propriétés foncières - -	12,500 00
Montant total - - -	64,046 20½
Balance en faveur de la succession, valeur en propriétés, argent, etc. - - - - - - -	91,950 49½

Testamentary account—Continued.

De cette balance, consistant en valeur, en effets mobiliers, propriétés, et autres valeurs, et en argent, montant à -	91,950 49½
Il faut déduire:	
1o. Le montant auquel a droit le Docteur F. Formento, pour ses soins et traitement pendant la maladie du défunt.	
2o. Les honoraires qui seront alloués par la cour à Mr. Martin Blache, avocat nommé pour représenter les héritiers absens.	
La balance revient à Madame Ve. Collard, sœur et legataire universelle du défunt, de laquelle balance devra être déduite la taxe de dix pour cent, imposée par la loi de 1842, en faveur de l'Etat de la Louisiane, sur tous légataires, héritiers, et donataires, étrangers, et qui doit être versée par l'exécuteur dans le trésor de l'Etat.	

Sauf erreur ou omission.

(Signé) FELIX GRIMA, *Ex'r Test'e.*

Nouvelle Orleans, *le 2 Juin*, 1845.

Petition praying for homologation of account, filed 2d June, 1845.

To the honorable Joachim Bermudez, judge of the court of probates in and for the parish and city of New Orleans.

The petition of Felix Grima, residing in the city of New Orleans, the duly appointed testamentary executor of the late Jean Mager, who died in the said city of New Orleans on the twenty-fourth day of February now last past, respectfully represents:

That by decree of your honorable court, signed on the twenty-seventh day of May last past, Mistress Agathe Alexandrine Mager, widow of the late Jean Joseph Collard, residing at Metz, in the Kingdom of France, the sister of the said late Jean Mager, was recognised as the universal legatee of her said deceased brother, Jean Mager, in conformity with his last wills and testaments, registered in your honorable court, and ordered to be executed, and was by said decree ordered to be put in possession of said estate; that by the same decree Mr. Joseph Alfred Collard, the son of the said Widow Collard, also residing at Metz, but now in this city, was recognised by this court as the duly authorized attorney in fact of said Widow Collard, universal legatee aforesaid; and that your petitioner, as testamentary executor of the said late Jean Mager, was ordered to render within ten days an account of his administration as testamentary executor aforesaid.

And now your petitioner, in his capacity aforesaid, presents to this honorable court a detailed account of the situation of the said succes-

1245.

sion, and of the administration of your petitioner as testamentary executor aforesaid, which he prays may be filed.

Wherefore petitioner prays that the said Joseph Alfred Collard, attorney in fact aforesaid, be notified herewith; that after the publications and advertisements required by law to the creditors of said estate, and to all parties interested, to shew cause within ten days, if any they have, why the said account should not be homologated; and after due proceedings had, it may please your honor to order that said account be approved and homologated, and that petitioner be authorized to pay the debts and legacies in conformity therewith. And whereas, by an act of the legislature of the State of Louisiana, entitled "an act to increase the revenue of the State of Louisiana, sect. 4th," a tax of ten per cent. is imposed in favor of the State, to be paid by each and every person not being domiciliated in this State, and not being a citizen of any State or territory in the Union, who shall be entitled, whether as heir, legatee, or donee, to the whole or any part of the succession of a person deceased, whether such person shall have died in this State or elsewhere, on all sums, or on the value of all property which he may actually receive from said succession, or so much thereof as is situated in this State after deducting debts due by said succession. And whereas the said Mistress Widow Collard, the sister and universal legatee of the said late Jean Mager, is not domiciliated in the State of Louisiana, and is not a citizen of any State or territory in the Union, petitioner, in his said capacity, further prays that Isaac T. Preston, esqre., attorney general of the State of Louisiana, on behalf of the said State, be notified herewith.

And petitioner prays for such other order and decree as the nature of the case may require.

(Signed) FX. GRIMA.

Order.

Let public notices be given to the creditors of this estate, and to all others therein interested, to shew cause, within ten days from public notification hereof, why the within account should not be approved and homologated, and the funds be distributed accordingly.

New Orleans, 2d June, 1845.

(Signed) J. BERMUDEZ, *Judge.*

Service accepted.

(Signed) ALF. COLLARD.

Order.

Let William De Buys, esqr., treasurer of the State of Louisiana, be notified of the within petition.

New Orleans, 7th June, 1845.

(Signed) J. BERMUDEZ, *Judge.*

Service accepted for the treasurer of the State.

(Signed) EUGENE MUSSON, *of counsel.*

Opposition of Widow Collard, filed 14th June, 1845.

To the honorable the court of probates in and for the parish of Orleans.

The opposition of Agatha Alexandrine Mager, Widow Collard, residing at Metz, in France, to the tableau filed by Felix Grima, testamentary executor of the late Jean Mager.

This opponent says that she has been appointed universal legatee of the said deceased, and that she opposes the tax of ten per cent. charged on the sums coming to your petitioner and opponent in her said capacity, which tax amounts to upwards of nine thousand dollars.

This opponent maintains that the said tax is contrary to, and in violation of, the Constitution and laws of the U. S., and of the State of Louisiana.

Wherefore this opponent prays that the said item be stricken out of the account of said executor.

(Signed) DENIS & PITOT,
Att'ys for opponent.

Statement of facts agreed.

Succession of John Mager, on the opposition of Alexandrine Collard, to the tableau filed by the testamentary executor.

Case agreed.

1st. The tableau filed by the executor is made part of this case, to shew that the executor retains from the opponent, the universal legatee of John Mager, the sum of eight thousand dollars and upwards, being the amount of the tax imposed by the 4th section of the act of the legislature of the State of Louisiana, passed on the 26th of March, 1842, on property or estates inherited by foreigners within the State of Louisiana, and which is in the words and figures following:

Sect. 4th. Be it further enacted, &c., That each and every person, not being domiciliated in this State, and not being a citizen of any State or territory in the Union, who shall be entitled, whether as heir, legatee, or donee, to the whole or any part of the succession of a person deceased, whether such person shall have died in this State or elsewhere, shall pay a tax of ten per cent. on all sums, or on the value of all property, which he may actually receive from said succession, or so much thereof as is situated in this State, after deducting debts due by said successions. When the said inheritance, donation, or legacy, consists of specific property, and the same has not been sold, the appraisement thereof in the inventory shall be considered as the value thereof. Every executor, curator, tutor, or administrator, having the charge or administration of succession property belonging, in whole or in part, to a person residing out of this State, and not being a citizen of any other State or territory, shall be bound to retain in his hands the amount of the tax imposed by this act, and to pay over the same to the State treasurer, if the succession be opened in the parish of Orleans or Jefferson, or to the sheriff if the succession be opened in any other

1246.

parish; in default whereof every such executor, curator, tutor, or administrator, and his securities, shall be liable for the amount thereof. It shall be the special duty of the judges of the courts of probate to see that the tax imposed by virtue of this section be collected and paid over; and each of said judges shall be bound to furnish to the treasurer, one a year, a statement or list of the successions opened in his parish, whereof persons who are neither residents of this State, or citizens of any other State or territory in the Union, are heirs, legatees, or donees, in whole or in part, and of the amount accruing to such persons; and any judge failing to furnish such statement shall be subject to a fine not exceeding five hundred dollars for each and every such omission; and that he be responsible to the State for the amount due; and that the sheriffs of the different parishes throughout the State, except those of the parishes of Orleans and Jefferson, shall pay over the taxes thus received from successions in the same manner, and be subject to the same penalties, as in the payment of other taxes; and that the taxes thus received be taken in view in the execution of the sheriff's bond.

2d. It is agreed that by the laws of France a tax or duty of six and a half per cent. would be levied by the French Government on an inheritance falling to an American citizen, in the same degree of relationship to a deceased French subject as the opponent and universal legatee in this case bore to the deceased John Mager, the testator.

3d. The testator, John Mager, was a natural born Frenchman, who had emigrated to the United States after the cession of Louisiana to France, and died in the city of New Orleans.

4th. The opponent, Agathe Alexandrine Mager, Widow Collard, is the sister of the testator, and his universal legatee, according to his last will and testament, duly recorded in this court, and admitted to probate, and is a French subject residing in France.

5th. The last will of the testator, John Mager, and all the mortuary proceedings in this court, make part of this case, and may be referred to, and used in whole or in part, by either party.

If upon this case the law of the State of Louisiana aforesaid, imposing the tax aforesaid, be valid, and not repugnant to the Constitution of the United States, *when* the opposition of the opponent to be dismissed, and the tableau homologated and approved. If, on the contrary, the said law imposing said tax is repugnant to the Constitution of the United States, *when* the opposition shall be maintained, and the item of eight thousand dollars and upwards, as aforesaid, retained as the amount of said tax, shall be expunged, and the same merged in the succession of the said John Mager, to be paid over to his universal legatee.

(Signed) ISAAC T. PRESTON,
Att'y general.
H. R. DENIS,
Att'y for opp't.

Judgment.

In the court of probates, in and for the parish and city of New Orleans.

WEDNESDAY, *July 23d*, 1845.

Succession of John Mager, on the oppositions made to the homologation of the account rendered by F. Grima, as the testamentary executor of deceased.

These oppositions, five in number, come from :

1st. Félix Formento, as physician of the deceased, during his last illness, for his services.

2d. A. Léon, as dentist of the deceased, for his services in the performance of several operations.

3d. Martin Blache, esqre., for services rendered to the absent heirs, as their attorney at law, under the appointment of this court.

4th. The State of Louisiana to the universal legacy in favor of the only legal heir of the deceased.

5th. The universal legatee to the tax of ten per cent., which the executor has allowed to the State.

1st. On the first opposition the parties herein concerned have come to the understanding and agreement, that a sum of eight hundred dollars be allowed to Félix Formento, in full of the services he has rendered to the deceased.

2d. On the second opposition the demand set up by A. Léon has been withdrawn on his own application to the court.

3d. The third opposition is based upon a refusal on the part of accountant, either to acknowledge or reject the demand of fifteen hundred dollars presented to him by Mr. Blache, as a compensation for his services, leaving this compensation to be fixed by this court.

It is not the first time that the strange doctrine, "that the judge of this court is alone to fix the fees or emoluments of the attorney of absent heirs," has been attempted to be forced in the practice of this court, to give currency to the no less strange doctrine which the Supreme Court have on several occasions sanctioned in the very teeth of clear, positive, and express legislation to the contrary.

We have, on repeated occasions, expressed the opinion, that it is our bounden duty to obey the mandate of the Supreme Court in the case adjudged; that we consider it also our duty to submit to the interpretation given to our laws by the highest tribunal of the land, when our legislation permits to seek into the spirit of the law; that, while we admit this, there are cases in which the behests of the law are so clear, so intelligible, and so precise, that it is not possible to mistake their meaning; that the judge of an inferior court has duties to perform as well as the judges of the highest tribunal, and he is to answer to the public and his conscience for the honest and fearless discharge of the important trust of which he is the guardian; that, whatever reluctance he may have to array his individual opinion against that of the Supreme Court, there are occasions on which the failure on his part to do so would be a dere-

liction of duty and a violation of his oath of office; and, therefore, when it appears to us that the Supreme Court have deviated from the positive mandate of the law, we feel constrained to abandon their guidance, to follow that of the law itself, which we deem more consonant to duty, &c.

On the question, whether this court shall fix the fees or emoluments of the attorney of absent heirs, before there being any evidence adduced to show the services and value thereof, as required by the decisions of the Supreme Court, in 5th N. S. 375, &c , or " after proof being made of the services by him rendered, and of the value thereof," as required by the 1213th article of the Louisiana code, we have expressed our opinions, and more particularly so in the judgments we rendered on the 17th February, 1844, and 10th June, 1845, in the matter of the succession of L. A. Lemoyne, and on the 24th January, 1844, in the matter of the succession of Jacynthe Gerojon.

In the first judgment, we said :

" If the opponent's counsel have not made a sham opposition, and really intends to have his client's interest protected against extortionate and extravagant charges by public officers, lawyers, &c., let him not fold his arms when the opportunity would present itself to oppose oral, when literal proof is required; let him introduce rebutting evidence, when what he considers as overcharge is proved by his adverse party to be reasonable and customary; and when he does this, he may then fold his arms and rest assured, that without exhausting his lungs in the defence of his client and of his politics, the judge of the court of probates will do his duty with at least as much uprightness and firmness as he can boast of discharging his."

And in the second judgment, we said :

" On the third ground of opposition, to wit, the item of $1,500, allowed to H. St. Paul for his services as attorney of the administrator, there has been no evidence adduced to impair, in the least, the testimony of the respectable and credible witnesses who have been heard in support of this charge. I find no where the authority, which it is the desire of the opponent I should be invested with, to disregard the evidence, and to set myself a value to the services of Mr. St. Paul. The law no where says, that the facts coming out of the mouth of a judge are of more weight, and are more to be relied upon, than those coming from other persons equally possessed of as good fame and credibility. I have neither the disposition nor the will to assume such responsibility, and knowing full well what the law is as regards the attorney of absent heirs, I feel safe in saying with the law giver, no fee or compensation shall be allowed to any attorney, except on proof being made of the services by him rendered, and of the value thereof, L. C. 1213. Under these circumstances, and the refusal of the opponent to introduce rebutting evidence on this subject, I cannot but give full and entire effect to the evidence adduced in support of the item of $1,500, and consider it proved."

And we finally said, in the last judgment above referred to—

" It is contended that it is the bounden duty of the judge, regardless

of evidence adduced, to fix the compensation which an attorney may claim for services by him rendered. Were the judge of this court, in matters of fact, to assume such a right, it would be a declaration, on his part, that gentlemen of the bar, who are the best experts to set a value to the services of a lawyer, are unworthy of credit; that the judge alone is worthy of belief. The time has not yet arrived when a party overcharged by a lawyer is not able to find among the gentlemen of the profession men possessed of sufficient honor and integrity to discountenance such overcharges by their testimony. If the overcharge complained of does really exist, how does it happen that no rebutting testimony was offered to enable the judge to arrive at a just and equitable conclusion on the real facts of the case? Besides, it has not entered the views of the law-giver that a judge of the court of probates should alone fix the fees or emoluments to the attorneys which represent the absent heirs, except on proof being made of the services by them rendered, and of the value thereof, contradictorily with the heirs or administrator, etc. L. C. 1213. I consider this rule of law to apply to all demands for fees or emoluments claimed by the attorneys of administrators, and feel it my duty to consider as true and correct the uncontradicted evidence adduced in support of such fees or emoluments."

We are still firm and unshaken in the same opinion, and have only to regret that gentlemen of the bar, who have taken the same oath as we have to support the constitution and the laws, should be so tenacious in holding up decisions, from whatever source they may come, as paramount to a constitutional and wise law, couched into clear and intelligible language, as to exclude the possibility to evade its letter under the pretence of seeking for its spirit.

Leaving to others their own course to pursue, my oath, my respect for the laws of my native country, compel me to consider as proved the services of the attorney of the absent heirs, the amount of fifteen hundred dollars, the sum claimed.

4. The opposition of the State of Louisiana rests upon the provisions of the 1477th act of the Louisiana code, in the words following, viz: "Donations inter-vivos, or mortis causa, may be made in favor of a stranger, when the laws of his country do not prohibit similar dispositions from being made in favor of a citizen of the State." In support to this opposition, it is asserted that Jean Mager, a Frenchman by birth, on becoming a citizen of the United States without the authorization of the French government, has forfeited *ipso jure* under the laws of France all the pretensions he would have otherwise had to inherit from his sister and legatee (Mrs. Collard) had he survived her; hence, and by reason of the reciprocity established by the above recited article of our code, the said Mrs. Collard should not be permitted to inherit by donations either inter-vivos or mortis causa, from said Mager.

The State having failed to prove the necessary and essential allegation contained in their opposition, viz., without authorization, should for this failure alone be dismissed from their demand; but even admitting this fact to have been proved, could it indeed be seriously expected at

1248.

the hands of an American judge, that a stigma would be put upon an adopted citizen of the United States, because he has not obtained, previous to his naturalization, an authorization therefor from the government of his native country?

It is difficult to conceive upon what ground a claim can be rested, to give to any municipal laws an extra territorial effect, when those laws are prejudicial to the rights of other nations or their subjects. It would at once annihilate the sovereignity and equality of the nations which would be called upon to recognise and enforce them. A claim, so naked of principle and authority to support it, is wholly inadmissible.

5. The fifth and last opposition comes from the universal heiress, Mrs. Collard, and is confined to the item of the account, in these words and figures, viz: "La balance revient à Mme. Vve. Collard, sœur et légataire universelle du défunt, de laquelle balance devra être déduite la tax de dix pour cent., imposée par la loi de 1842, en faveur de l'etat de la Louisiane, sur tous légataires, héritiers, et donataires étrangers, et qui doit être versée par le dit executeur dans le trésor de l'etat.

It is contended that the imposition of this tax belongs exclusively to the Congress, under the provision of the Constitution of the United States which gives to Congress the power to regulate commerce with foreign nations, and to make all laws that shall be necessary and proper for carrying this power into execution.

The tax above alluded to is uniformly laid upon the portion of the estate of a person, citizen or alien, dying possessed of property in this State, which by the operation of our laws goes to foreigners.

The property composing the estate of J. Mager is not of a recent importation; it has been gradually acquired during his long residence in this State. It is only by the operation of the law that a person can dispose of his property, for the time when he would cease to exist, or that an heir can claim the estate of his deceased relation. In the absence of such a law, the estate of a deceased person would unavoidably go to the State. The law assigns as the portion of the father in the estate of his son, leaving one or more brothers, one fourth part only, whilst it assigns the three remaining fourths to the brother or brothers. It has pleased the law-giver to say:

That the surviving spouse shall inherit one tenth part and no more of the estate of the deceased, when the latter leaves one or more children; whilst a stranger to the deceased is permitted to inherit five times as much. It is not long hence that the father was the forced heir of his son, to the exclusion of his other children. Such different rules being made to exist by laws, the constitutionality of which has never been made a question—it is asked, with no little surprise, whence would Congress derive the authority to assign a foreigner the whole of an estate, when it is the behest of the State law that he should have but nine-tenths of the same, and no more.

The first and most general maxim or proposition is, that every State possesses an exclusive sovereignty and jurisdiction within its own territory. The direct consequence of this rule is, that the laws of every

State affect and bind strictly all property, whether real or personal, within its own territory; and all persons who are residents within it, whether natural born subjects, or aliens; and also all contracts made and acts done within it. A State may, therefore, regulate the manner and circumstances under which property, whether real or personal, or in action within it, shall be held, transmitted, bequeathed, or transferred, or enforced; the condition, capacity, and state of all persons within it; the validity of contracts, and other acts done within it; the resulting rights of duties growing out of these contracts and acts, and the remedies and modes of administering justice in all cases calling for the interposition of its tribunals to protect, vindicate, and secure the wholesome agency of its own laws within its own domains. Story, Conflict of Laws.

I have in vain looked in the Constitution of the United States for the exclusive power which it is asserted Congress have in the premises. It certainly does not exist among those enumerated in the Constitution. I am at a loss to know how it could even be inferred. The power to lay a tax upon the estate of a deceased person is certainly not prohibited to the States; hence, it must be reserved.

It is asserted that there exists now a treaty with Prussia, in direct conflict with the law of the State, on the subject of the law in dispute. Admitting that it does, though I doubt it much, it is not contended that a like treaty exists with France, and until then we cannot be accused of passing laws which counteract in the least the operation of the General Government. With this view, on the separate oppositions made to the homologation of the account rendered by F. Grima, esq'r, as the testamentary executor of the late Jean Mager, it is ordered, adjudged, and decreed, that the said accoun the amended by inserting thereon Felix Formento as a creditor for the sum of eight hundred dollars, in lieu of that claimed by him and rejected by the executor; that the opposition of A. Leon be dismissed at his costs; that the opposition made by Martin Blache be sustained, and that he be placed on said account as a creditor for fifteen hundred dollars, the sum by him claimed and proven; that the opposition made to the item in favor of the State, and the one made by the State to the item in favor of the universal legatee, be dismissed at their respective costs, and that, amended as hereinabove directed, the said account be approved and homologated, and the executor of the deceased do distribute the funds in hands in accordance with said account so amended.

New Orleans, 28 July, 1845.

(Signed) J. BERMUDEZ, *Judge*.

Petition of appeal.—Filed 29 *July*, 1845.

To the honorable the court of probates in and for the parish of Orleans.

The petition of Alexandrine Mager, Widow Collard, universal legatee of the late Mager, respectfully sheweth: That the petitioner is advised there is error in a certain judgment rendered by this court on the opposition of the petitioner to the tableau of the executor of the said J. Mager, opposing the tax of ten per cent. imposed on foreign legatees.

That the said judgment was signed by this hon. court on the 28th July, inst.

That the petitioner feels aggrieved by the said judgment; wherefore she prays, in fulfilling the requisites of the law, that a suspensive appeal be granted to her.

(Signed) DENIS & PITOT,
Attorneys for petitioner.

Order.

Let a suspensive appeal be allowed in this case, returnable in the supreme court of the State of Louisiana, on the 1st Monday in November next, the appellant giving bond and security in the sum of fifteen thousand dollars, with F. Grima as his security, conditioned as law directs.

(Signed) J. BERMUDEZ, *Judge.*
New Orleans, 29 July, 1845.

Bond.

THE STATE OF LOUISIANA.

Know all men by these presents, that we, Alexandrine Mager, Widow Collard, and Felix Grima, are held and firmly bound unto the State of Louisiana, executors, administrators, and assigns, in the sum of fifteen thousand dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated in the city of New Orleans, on this 29th day of July, in the year of our Lord one thousand eight hundred and forty-five.

Whereas, the above bounden A. M., Widow Collard, this day filed a petition of appeal from a final judgment rendered against her in the suit of the estate in the court of probates, in and for the parish and city of New Orleans, on the 23d day of July, 1845.

Now the condition of the above obligation is such, that the above bound Alexandrine Mager, Widow Collard, shall prosecute her appeal, and shall satisfy whatever judgment may be rendered against her, or that the same shall be satisfied by the proceeds of the sale of her estate, real or personal, if she be cast in the appeal, otherwise that the said F. Grima, surety, shall be liable in her place.

(Signed) Pr. pro WIDOW ALEXANDRINE,
COLLARD F. GRIMA, [L. S.]
FX. GRIMA. [L. S.]

Signed, sealed, and delivered in presence of—
(Signed) H. R. DENIS.

Agreement.—Estate of Mager.

The appeal of Alexandrine Mager, Widow Collard, as to the tax.

The record must be composed: Of the petition of F. Grima, testamentary, with his account; of the opposition of Alexandrine Mager, Widow Collard; of the statement of facts agreed; the judgment of this court; the petition of appeal ordering bond.

Each party will be at liberty to produce any part of the mortuaria, duly certified by the clerks, or any other evidence produced.

(Signed,) ISAAC T. PRESTON,
Atty. general.

I, Andre D. Doriocourt, deputy register of wills in and for the parish and city of New Orleans, State of Louisiana, and ex officio deputy clerk of the court of probates in and for said parish and city, do hereby certify, that the foregoing transcript contains a true copy of all the proceedings had and evidence adduced by the parties on the trial of the opposition, made by Alexandrine Mager, Widow Collard, universal legatee, &c , to the tableau filed by the executor of Jean Mager.

In faith whereof I have affixed my hand, and the seal of the court of probates, at the city of New Orleans, on this 4th November, 1845.

(Signed,) AND. D. DORIOCOURT, [SEAL.]
Dy. register of wills.

I, Charles Maurian, parish judge, acting in the absence of the honorable J. Bermudez, judge of the court of probates of the parish of Orleans, do hereby certify, that the foregoing transcript contains a true copy of all the proceedings had and evidence adduced by the parties on the trial of the case mentioned in the certificate of the register of wills.

In faith whereof I have affixed my hand and private seal, at the city of New Orleans, on this 4th November, A. D. 1845.

(Signed,) CHARLES MAURIAN, [L. S.]
Parish judge, acting in the absence of the Hon. J. Bermudez.

Supreme court of the State of Louisiana, E. D.

TUESDAY, *December 9th*, 1845.

The court met: Present, their honors F. X. Martin, Hy. A. Bullard, A. Morphy, and E. Simon.

Succession of Jean Mager, on the opposition of Agathe Alexandrine Mager, Widow Jean Joseph Collard, to the tableau filed by the testamentary executor. 5924.

It is ordered that this cause be continued for want of time.

Supreme court of the State of Louisiana, E. D.

WEDNESDAY, *December 10th*, 1845.

The court met: Present, their honors F. X. Martin, Hy. A. Bullard, A. Morphy, and E. Simon.

Succession of Jean Mager, on the opposition of Agathe Alexandrine Mager, Widow Jean Joseph Collard, to the tableau filed by the testamentary executor. 5924.

On motion of H. R. Denis, esq., of counsel for Widow Collard, it is ordered that leave be granted him to file the peremptory exception of said Widow Collard, praying that the application of the State be rejected.

Supreme court of the State of Louisiana, E. D.

TUESDAY, *December* 23*d*, 1845.

The court met: Present, their honors F. X. Martin, A Morphy, and E. Simon; his honor Judge Bullard is absent by leave of court.

Succession of Jean Mager, on the opposition of Agathe Alexandrine Mager, Widow Jean Joseph Collard, to the tableau filed by the testamentary executor. 5924.

This cause was this day called for trial; and the arguments having lasted until the end of the sitting of the day, were ordered to be continued until to-morrow.

Supreme court of the State of Louisiana, E. D.

WEDNESDAY, *December* 24*th*, 1845.

The court met: Present, their honors F. X. Martin, A. Morphy, and E. Simon; his honor Judge Bullard is absent by leave of court.

5924. Succession of Jean Mager, on the opposition of Agathe Alexandrine Mager, Widow Jean Joseph Collard, to the tableau filed by the testamentary executor.

The arguments in this cause were this day resumed; and, having again lasted until the end of the sitting of the day, were ordered to be continued until Monday, the 12th of January next.

Supreme court of the State of Louisiana, E. D.

MONDAY, *January* 12*th*, 1846.

The court met: Present, their honors F. X. Martin, A. Morphy, and E. Simon; his honor Judge Bullard is absent by leave of court.

5924. Succession of Jean Mager, on the opposition of Agathe Alexandrine Mager, Widow Jean Joseph Collard, to the tableau filed by the testamentary executor.

It is ordered by the court that this cause be continued until to-morrow.

Supreme court of the State of Louisiana, E. D.

TUESDAY, *January* 13*th*, 1846.

The court met: Present, their honors F. X. Martin, A. Morphy, and E. Simon; his honor Judge Bullard is absent by leave of court.

Succession of Jean Mager, on the opposition of Agathe Alexandrine Mager, Widow Jean Joseph Collard, to the account filed by the testamentary executor. 5924.

The arguments in this cause were this day resumed and closed. Eugene Musson, I. T. Preston, and J. F. Pepin, esqrs., for the State of Louisiana, and H. R. Denis and F. Grima, for estate and heirs.

Supreme court of the State of Louisiana, E. D.

MONDAY, *February* 16*th*, 1846.

The court met: Present, their honors F. X. Martin, H. A. Bullard, A. Morphy, and E. Simon.

Succession of Jean Mager, on the opposition of Agathe Alexandrine Mager, Widow Jean Joseph Collard, to the tableau filed by the testamentary executor. 5924.

Appeal from the court of probate, in and for the parish and city of New Orleans.

In this cause, the court this day delivered their opinion in writing, in the words and figures following:

On rendering an account of his administration, the testamentary executor of this estate, mentioned at the foot of it, that from the balance of $91,950 49, accruing to Widow Collard, the sister and universal legatee of the deceased, a non resident alien, there was to be deducted the tax of ten per cent. thereon, imposed by the law of the 26th of March, 1842, on property inherited by, or bequeathed to, any person not domiciliated in this State, and not being a citizen of any State or territory in the Union. The universal legatee objected to the tax charged on the amount accruing to her, on the ground that said tax was contrary to, and in violation of, the Constitution of the United States; and prayed that it be stricken out of the executor's account. An opposition was then made by the State treasurer, in which the attorney general joined, claiming on behalf of the State of Louisiana the whole succession of Jean Mager, on the ground that the deceased, who was born a French subject, became by naturalization a citizen of the United States, without the consent or authorization of his government; that by this fact he forfeited, under the laws of France, all right of inheriting or receiving donations *inter-vivos* or *causa mortis* from his sister, Widow Collard, or from any other person in France; that by our laws donations *inter-vivos* and *mortis causa* cannot be made in favor of a foreigner, where the laws of his country prohibit similar dispositions from being made in favor of a citizen of this State; and that, by reason of the reciprocity thus established, Widow Collard should not be permitted to take the legacy made to her by her brother, but that the same should go to and be paid into the State treasury. The probate judge rejected both oppositions, and ordered the account to be homologated. From this judgment the universal legatee has appealed, and in this court the attorney general has asked that it be affirmed, so far as it maintains the tax in favor of the State, and that it be amended so as to annul the legacy made to Widow Collard, and to decree the whole estate of the deceased to the State of Louisiana.

This court on various occasions has been called upon to decide questions arising under the law of the 26th of March, 1842, and the former law of 1828, imposing a tax on property inherited by, or bequeathed to, non resident aliens, and we are not aware that the constitutionality of those laws has ever been questioned, 3 L. R. p. 336 and 561: 6 Rob. p. 504; 9 Rob. 357; but it is now urged that this tax is contrary to and in violation of the Constitution of the United States, and we are referred to the eighth and tenth sections of the first article of that instrument. After a careful examination of the provisions therein contained, we are

unable to see in what manner either their letter or even their spirit has been violated. We hold it to be an undeniable proposition, that each State of this Union, by virtue of its sovereignty, has the power to tax all persons and property within its limits, and that this right remains in the States concurrent and co-extensive with that of Congress, with the sole exception of duties on imports and exports, which the Constitution has taken from the States, unless it is exercised with the consent of Congress. It cannot have been seriously urged by counsel that the tax in question must be viewed as an impost or duty on imports and exports. By way of illustration, they have supposed the case of a foreign merchant dying here shortly after having imported a large quantity of goods, which would be subject to this tax, although duties had already been paid to the General Government; and that of foreign heirs wishing to export the money or effects bequeathed to them, which they could not do without paying this tax. To this the answer is obvious. The tax is not imposed because the goods have been imported, or because the foreign heirs wish to export the money or effects bequeathed to them, but because in both of the cases supposed the property taxed is found in a succession opened in this State and claimed by foreigners, whose right to inherit, the same being derived from the laws of the State, can unquestionably be curtailed by posterior laws. The tax to which the Legislature have seen fit to subject the right of aliens to inherit property in this State is due, whether such property has been imported or not, and whether the foreign heirs intend to export it or to leave it in the country. The accidental circumstance of the property having been imported recently, or being intended to be exported, cannot surely affect or diminish the right of the State to tax it, by bringing it within the constitutional prohibition on the States to lay a duty on imports and exports. The case of Brown vs. the State of Maryland, quoted from 12th Wheaton, has no analogy to the present. The state of Maryland had passed an act, requiring all importers of foreign goods by the bale or package, and other persons selling the same by wholesale, bale, or package, &c., to take out a license, for which they should pay fifty dollars, &c. The grounds upon which the court put that case were, "That sale is the object of all importation of goods; that, therefore, the power to allow importation implied the power to authorize the sale of the thing imported; that a penalty inflicted for selling an article in the character of importer, was in opposition to the act of Congress, which authorized importation under the authority to regulate commerce; that a power to tax an article in the hands of the importer the instant it was landed, was the same in effect as the power to tax it whilst entering the port; that, consequently, the law of Maryland was obnoxious to the charge of unconstitutionality, on the ground of its violating two provisions of the Constitution—the one giving to Congress the power to regulate commerce, the other forbidding the States from taxing imports."

It is not pretended that the tax in question interferes with or is contrary to any law of Congress regulating commerce, or any treaty subsisting between France and the United States, stipulating that no such

tax shall be laid on the property of successions opened in either country, which may be claimed by inheritance or bequest by the citizens of the other. Far from this being the case, it is admitted on the record "that, by the laws of France, a tax or duty of six and a half per cent. would be levied by the French Government on an inheritance falling to an American citizen, in the same degree of relationship to a deceased French subject, as the opponent and universal legatee in this case bore to the late Jean Mager, the testator." We conclude, then, that the State of Louisiana, having clearly acted within the scope of its powers in passing the statute of 1842, it must be carried into effect, until some treaty is made, or some law is passed by Congress, inconsistent with its provisions. In the event of such a collision, the law of the State will have to yield and become inoperative.

The opposition made on behalf of the State has no better foundation than that of the universal legatee. It is based on article 1477 of the Louisiana code, and on two imperial decrees passed by the French Government in 1809 and 1811, whereby it was provided, among other things, that if any French subject caused himself to be naturalized in a foreign country, without the consent of his Government, he should incur the forfeiture of his property in France, should lose the right of inheriting, and that all successions opening in his favor should pass to the nearest heir after him, entitled to take, &c. Art. 6, T. 2, of the decree of 1811. It is urged that as Mager, who was born in France, and who became naturalized here without the consent of the French Government, could not have inherited from his sister, Widow Collard, had he been her nearest heir, she, under the principle of reciprocity established by the article above quoted, should not be permitted to receive any bequest from him. It is, in the first place, extremely doubtful whether the harsh decrees referred to have at the present time any force or validity even in France. There is, on this subject, a great diversity of views among the French jurists; but the better and more reasonable opinion seems to be, that they are inconsistent with, and have been repealed by posterior laws, and particularly by a law passed on the 14th of July, 1819, which unconditionally admits all foreigners to take by inheritance in France; but, be this as it may, the article 1477 of our code has, in our opinion, no application to a case like the present. It establishes, in relation to the validity of donations inter-vivos and mortis causa, a principle of reciprocity between the two nations. If American citizens can receive bequests in France, so can French subjects here. The decrees alluded to, if considered as being yet in force, would not have denied to Jean Mager the right of inheriting from his sister in France, on the score of his being an American citizen, but because, as a French subject, he had offended against the municipal laws of his native country, by causing himself to be naturalized without the consent of his Government. Had Mager, in the same way, become a citizen of any other country than the United States, the consequences to him would have been the same in relation to his right of inheriting in France; and yet Widow Collard's claim to a bequest from him could

surely not have been disputed under the provision of our code, which is now relied on. Can it be expected that we will punish Mager or his heirs because he thought proper to become an American citizen; that we shall give extra territorial force and effect to municipal laws of France, denouncing penalties against French subjects, so as to visit upon one of our citizens consequences which, under an express article of the Constitution of the United States, can be attached to or made the punishment of no crime or offence, however heinous? But, even were the strange position here assumed on behalf of the State well founded, in relation of Widow Collard's right to receive the bequest of her brother, it would by no means follow that the succession of Mager could be claimed by the State.

Being the sister, and one of the nearest legitimate heirs of the deceased, Widow Collard would be entitled to his succession by mere operation of law. L. C., art. 882, 945, and 946. The State can only take when there is no one entitled to an inheritance, or when it is not claimed by one having a right to the same. Art. 477, 911, and 923.

It is therefore ordered, adjudged, and decreed, that the judgment of the court of probates be affirmed with costs.

Petition of writ of error.

To the honorable François Xavier Martin, presiding judge of the supreme court of the State of Louisiana.

The petition of Alexandrine Mager, Widow Collard, humbly shews:

That she desires to prosecute a writ of error to the Supreme Court of the United States from the final judgment lately rendered against her in the said supreme court of the State of Louisiana, in the matter of the succession of John Mager, deceased, wherein your petitioner was opponent and plaintiff, and Felix Grima testamentary executor, of John Mager, deceased, and the Treasurer of the State of Louisiana, are defendants.

That your petitioner has obtained a writ of error, and has left a copy thereof in the clerk's office of the said supreme court according to law. He therefore prays that your honor will sign the citation in error, and fix the amount of the security to be given by your petitioner as plaintiff in error, according to the act of Congress in such case made and provided.

(Signed) JOHN R. GRYMES,
Attorney for petitioner.

Judge's order thereon.

Be it so, and let the plaintiff give bond, with Henry R. Denis as security, in the sum of five hundred dollars.

New Orleans, February 23d, 1846.

(Signed) F. X. MARTIN, *Senior Judge.*

Bond.

Know all men by these presents, that we, Alexandrine Mager, Widow Collard, as principal, and H. R. Denis, as surety, are held and

firmly bound unto Felix Grima, testamentary executor of the last will and testament of John Mager, deceased, and the Treasurer of the State of Louisiana, or either of them, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 23d day of February, in the year of our Lord one thousand eight hundred and forty-six.

Whereas lately, at a supreme court of the State of Louisiana, and for the eastern district of Louisiana, in suit depending in the said supreme court, wherein Alexandrine Mager, Widow Collard, is opponent and plaintiff, and Felix Grima, testamentary executor as aforesaid, and the Treasurer as aforesaid, are defendants, judgment was rendered against the said opponent and plaintiff, and the said Alexandrine Mager, Widow Collard, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Felix Grima and the said Treasurer, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of January next, having been signed by the honorable F. X. Martin, chief justice of said supreme court.

Now, the condition of the above obligation is such, that if the said Alexandrine Mager, Widow Collard, shall prosecute her writ to effect, and answer all damages and costs, if she fail so to make her plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) FELIX GRIMA. [L. S.]
Pro per Widow Collard.
HENRY R. DENIS. [L. S.]

UNITED STATES OF AMERICA,
Supreme court, eastern district, State of Louisiana:

I, Eugene Lasere, clerk of the supreme court of the State of Louisiana for the eastern district, do hereby certify, that the foregoing fifty-three pages contain a true copy of the transcript of the proceedings had in the court of probates in and for the parish and city of New Orleans, in a certain suit entitled "Succession of Jean Mager, on the opposition of Agathe Alexandrine Mager, Widow Jean Joseph Collard, to the tableau filed by the testamentary executor." And also of the proceedings had in this supreme court on the appeal taken by said Agathe Alexandrine Mager, Widow Jean Joseph Collard, which appeal is now on the files thereof, under No. 5924.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at the city of New Orleans, this third day of [SEAL.] March, 1846, and in the seventieth year of the independence of the United States of America.

EUGENE LASERE, *Clerk.*

UNITED STATES OF AMERICA,
Supreme court, eastern district, State of Louisiana:

I, François Xavier Martin, senior judge of the supreme court of the State of Louisiana, do hereby certify, that Eugene Lasere is clerk of the supreme court for the eastern district; that the signature of Eugene Lasere to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this third day of March, 1846.

F. X. MARTIN. [SEAL.]

Citation in error.

The United States of America, to Felix Grima, testamentary executor of the last will and testament of John Mager, deceased, and the Treasurer of the State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, and eastern district of Louisiana, wherein Alexandrine Mager, Widow Collard, *is* opponent and plaintiff, in the matter of the succession of John Mager, deceased, is plaintiff in error, and you are defendants in error; to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-third day of February, in the year of our Lord one thousand eight hundred and forty-six.

F. X. MARTIN,
Sen'r Judge.

Marshal's return.

Rec'd 27th February, 1846, and on the same day served copy of the within citation in error on Wm. De Buys, State treasurer, and on F Grima, testamentary executor of J. Mager, both in person; returned 27th February, 1846.

L. H. SERE,
Dy. Sheriff P. O.

Received 2d March, 1846, and on the 3d same month served copy of the within citation in error on Isaac Johnson, governor of the State of Louisiana, and on W. A. Elmore, attorney general of the State, both in person.

Returned 3d March, 1846.

L. H. SERE,
Dy. Sheriff P. O.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the supreme court of the State of Louisiana, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Alexandrine Mager, Widow Collard, opponent and plaintiff, in the matter of the succession of John Mager, deceased, and Felix Grima, testamentary executor of the last will and testament of John Mager, deceased, and the Treasurer of the State of Louisiana, defendants, a manifest error hath happened, to the great damage of the said Alexandrine Mager, Widow Collard, as by her complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 20th day of February, in the year of our Lord one thousand eight hundred and forty-six.

EDMUND RANDOLPH, *Clerk.*
F. N. HARALSON,
Dy. Clerk of the United States circuit court and eastern district of Louisiana.

Filed, 19th February, 1847.

1254.

SUPREME COURT OF THE UNITED STATES.

No. .

WILLIAM H. IRWIN, APPELLANT,

vs.

GEORGE O. DIXION AND JOHN A. DIXION.

APPEAL FROM THE CIRCUIT COURT U. S. FOR ALEXANDRIA, D. C.

INDEX.

	Original.	Print.
Title—Bill	1	3
Exhibit A, referred to in complainant's bill	6	5
" B, " "	12	8
" C, " "	18	11
Judge's endorsement	21	13
Injunction bond	21	13
Subpœna	22	14
Amended bill filed	23	14
Amended bill	24	14
Exhibit D, deed of partition referred to in amended bill	30	18
Rules against William H. Irwin	51	27
Answer filed, and general commissions to take depositions, and rules dismissed	52	28
Answer	53	28
Exhibit No. 2, referred to in defendants' answer, deed from Ramsay and Carlyle to Fitzgerald and Peers	77	39
" No. 3, referred to in defendants' answer, deed from Fitzgerald and wife to Herberts	79	41
" No. 5, referred to in defendants' answer, extract from the old trustees' book of the town	90	46
Answer filed, general replication, and cause set for hearing	91	46
Commissions awarded to take depositions, and cause to stand for hearing peremptorily at next term	91	47
Motion for an issue; motion overruled	92	47
Decree	92	47
A, complainants' list of evidence	95	48
B, defendant's list of evidence	96	49
Deposition of William Gregory	101	51
" James M. Stewart	104	53
" James D. Kerr	106	53
" Leonard Marbury	109	55
" Stephen Shinn	113	57

J. & G. S. Gideon, printers.

	Original.	Print.
Deposition of Maskell C. Ewing	120	61
" Benoni Wheat	127	64
" John Ball	133	68
" Robert Jamieson	140	71
" Andrew J. Fleming	143	73
" Thomas Sanford	147	75
" Daniel Minor	149	76
Plat A, referred to in the foregoing depositions	155	79
Deposition of Charles J. Catlett	160	81
" Reuben Johnston	166	84
" Joseph Harris	183	92
" John H. Janney	191	95
" R. I. T. Wilson	201	100
" Joseph Nevitt	212	105
" William Yeaton	229	113
" Edward Sheehy	247	121
" Jno. Douglass	258	126
" Jno. Howard	268	131
Plat Y, referred to in the deposition of Wm. Yeaton	278	135
Deposition of Jno. Howard	281	137
" John H. Janney	306	149
" John C. Herbert	316	154
" Maskell C. Ewing, and plat referred to by him	320	157
" James Irwin	326	161
Exhibit H, allotment of the real estate of Thomas Irwin, deceased, to his heirs, referred to in Jas. Irwin's deposition	333	164
Exhibit B, release and assignment referred to in James Irwin's deposition	347	172
Executions, and marshal's returns thereon, filed by complainants	348	172
Deed from Carlyle and West to Washington, filed by defendant	352	174
Deed from Fairfax, Carlyle, and Washington, executors of Law. Washington, to Patterson, filed by defendant	353	175
Deed, Patterson to Fitzgerald and Peers	358	177
" Herbert to Dunlap and Irwin	362	180
" Dunlap and wife to Irwin	368	182
" Catlett, (trustee,) to Irwin	371	184
" of trust, Jas. Irwin and wife to Tho. Irwin	375	186
" " " " W. L. Hodgson	384	190
" Wm. H. Irwin and Ann B. Patton to P. E. Hoffman, marriage settlement	387	191
List of assessments filed by defendant	394	195
Wm. H. Irwin's appointment by Ann J. and Jno. E. Carey, as their agent	395	196
Wm. H. Irwin's appointment by Eliz. and Ann B. Irwin as their agent	396	196
Will of Thomas Irwin	397	197
Plat exhibited by defendant	399	198
Bond	400	198
Clerk's certificate	403	199

DISTRICT OF COLUMBIA, *to wit:*

Pleas before the honorable the judges of the United States circuit court of the district of Columbia, for the county of Alexandria, at the court house in the town of Alexandria, the 31st day of October, 1846.

Title.

GEORGE O. DIXION and JOHN A. DIXION, complainants, against WILLIAM H. IRWIN, defendant. } In chancery.

Be it remembered, that heretofore, to wit, on the 7th day of September, 1844, came the complainants aforesaid by Francis L. Smith, esq., their solicitor, and filed in the clerk's office of the said court their bill against the said defendant, which is in the words and figures following:

Bill.

To the honorable the judges of the United States circuit court for the District of Columbia, sitting in chancery in the county of Alexandria:

Humbly complaining sheweth unto your honors your orators, George A. Dixion and John A. Dixion, of the county and District aforesaid, who state and charge, that one James Irwin, being indebted to the Farmers' Bank of Alexandria, executed, in conjunction with his wife Ann D. Irwin, a deed of trust to John Hooff as trustee, dated the 28th day of February, 1842, for the purpose of securing the said indebtedness; that William H. Irwin and Elizabeth Irwin are also parties to said deed of trust, relinquishing thereby "all preference" which they had by virtue of certain prior deeds of trust covering the property described in said deed above mentioned. Your orators further charge that on forfeiture of the conditions of the said deed of trust (the original of which is herewith filed, marked A,) the said John Hooff, as trustee aforesaid, sold at public auction the property therein conveyed on the 5th day of October, 1842. That said sale was, as your orators believe and so charge, in all respects open, fair, and in strict compliance with the terms of the said trust deed; that the said William H. Irwin, among other persons, was present at said sale, and intimated no objection thereto, so far as your orators know or believe. Your orators being the highest bidders (jointly) became the purchasers of that portion of the property sold situate in the said town of Alexandria, as is thus described in the original deed therefor from the said John Hooff, trustee, and Elizabeth Irwin, to your orators, dated the 21st day of November, 1842, and filed as an exhibit herewith, marked (B,) "the warehouse aforesaid, with all rights and appurtenances to the same belonging, as fully as they were conveyed to him as aforesaid by the said James Irwin, the premises hereby inte[illegible] be conveyed fronting the Potomac river, and being supposed to b[illegible]

	Original.	Print.
Deposition of Maskell C. Ewing	120	61
" Benoni Wheat	127	64
" John Ball	133	68
" Robert Jamieson	140	71
" Andrew J. Fleming	143	73
" Thomas Sanford	147	75
" Daniel Minor	149	76
Plat A, referred to in the foregoing depositions	155	79
Deposition of Charles J. Catlett	160	81
" Reuben Johnston	166	84
" Joseph Harris	183	92
" John H. Janney	191	95
" R. I. T. Wilson	201	100
" Joseph Nevitt	212	105
" William Yeaton	229	113
" Edward Sheehy	247	121
" Jno. Douglass	258	126
" Jno. Howard	268	131
Plat Y, referred to in the deposition of Wm. Yeaton	278	135
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" Maskell C. Ewing, and plat referred to by him	320	157
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" Dunlap and wife to Irwin	368	182
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" " " " W. L. Hodgson	384	190
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Clerk's certificate	403	199

DISTRICT OF COLUMBIA, *to wit:*

Pleas before the honorable the judges of the United States circuit court of the district of Columbia, for the county of Alexandria, at the court house in the town of Alexandria, the 31st day of October, 1846.

Title.

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Bill.

To the honorable the judges of the United States circuit court for the District of Columbia, sitting in chancery in the county of Alexandria:

Humbly complaining sheweth unto your honors your orators, George A. Dixion and John A. Dixion, of the county and District aforesaid, who state and charge, that one James Irwin, being indebted to the Farmers' Bank of Alexandria, executed, in conjunction with his wife Ann D. Irwin, a deed of trust to John Hooff as trustee, dated the 28th day of February, 1842, for the purpose of securing the said indebtedness; that William H. Irwin and Elizabeth Irwin are also parties to said deed of trust, relinquishing thereby "all preference" which they had by virtue of certain prior deeds of trust covering the property described in said deed above mentioned. Your orators further charge that on forfeiture of the conditions of the said deed of trust (the original of which is herewith filed, marked A,) the said John Hooff, as trustee aforesaid, sold at public auction the property therein conveyed on the 5th day of October, 1842. That said sale was, as your orators believe and so charge, in all respects open, fair, and in strict compliance with the terms of the said trust deed; that the said William H. Irwin, among other persons, was present at said sale, and intimated no objection thereto, so far as your orators know or believe. Your orators being the highest bidders (jointly) became the purchasers of that portion of the property sold situate in the said town of Alexandria, as is thus described in the original deed therefor from the said John Hooff, trustee, and Elizabeth Irwin, to your orators, dated the 21st day of November, 1842, and filed as an exhibit herewith, marked (B,) "the warehouse aforesaid, with all rights and appurtenances to the same belonging, as fully as they were conveyed to him as aforesaid by the said James Irwin, the premises hereby intended to be conveyed fronting the Potomac river, and being supposed to be boun-

ded as follows, viz: Beginning on the south side of King street, at the northeast corner of the said warehouse, and running thence southwardly, with the east front of the same, to the centre of the south wall; then with the centre of said south wall, westwardly, to the east side of the east wall of a warehouse allotted by the said partition deed to William H. Irwin; then northwardly with the said east line of the last mentioned warehouse, and the east side of the warehouse by the same deed allotted to Mary Irwin, to King street; then eastwardly on King street, to the beginning." That your orators, having fully paid the amount of the purchase money at which said property was struck off to them at the sale aforesaid, the said John Hooff executed to them a deed of bargain and sale and release, dated the 21st day of October, 1843, which original deed is herewith filed as an exhibit, marked (C.) Your orators further state and charge, that since said sale the said property has been in their quiet and undisturbed possession, held by their tenant John Howard, who is at this time in possession of the same, but intends giving up the same in some few days. The said property fronts on the east the river Potomac, and the doors and windows of said front open on a strand, which has been used uninterruptedly as a public highway, as your orators are informed and believe, and believing charge, for upwards [of] thirty years. The said strand or street is the great thoroughfare for that part of the town of Alexandria between the river Potomac and the last range of warehouses fronting thereon; and, as your orators are informed and so charge, has always been used as a common and public highway for the free and uninterrupted passage and intercourse of the public; your orators charge, that the said warehouse purchased by them as aforesaid, with the doors and windows fronting as aforesaid, and opening on the said public strand, has been erected upwards of thirty years, without any effort or claim heretofore to obstruct the same.

Your orators further charge, that the said William H. Irwin, without any lawful claim or right whatsoever known to your orators, has conceived that he possesses the right to obstruct and close up the said doors and windows of your orators' said warehouse, fronting as aforesaid, and has, as your orators are informed and believe, and believing charge, employed carpenters and other workmen to proceed on to-morrow, (the 7th day of September, 1844,) to close up and obstruct the said doors and windows on the said strand by nailing plank and timber over the same, or by building a fence or enclosure just in front of the said warehouse, whereby its use and value would be greatly and seriously injured, as the said intended obstruction, unless prevented, will cut off all direct intercourse between the said front and the said public strand and river Potomac.

Your orators charge that they are informed and believe that the said Irwin has procured the lumber and materials, and engaged the workmen, to proceed with said obstruction, or some such obstruction, whereby your orators will be greatly injured in the use and occupation of their said property. Your orators charge that the said obstruction will be a nuisance, and if permitted to proceed, constitute an irreparable in-

1256

jury to their property. Being therefore without remedy in a court of common law, and only relievable from this great and sudden injury in a court of equity, your orators pray that your honors will grant the United States most gracious subpœna, with an injunction staying and prohibiting the said William H. Irwin, his agents, workmen, and servants, and all others, from erecting the said nuisance and obstruction in front of, or near, or opposite to, and between the said property and the river Potomac, or any gates or enclosures in the said strand between the eastern front of your orators' said property and the said river.

Your orators further pray, that your honors will stay and enjoin any such nuisance or obstruction, should the same have been commenced by the said Irwin, or by any person under his command or otherwise; and should the same have been erected before the serving of the injunction now prayed for, that your honors will order the same to be abated and removed.

Your orators further pray that the said William H. Irwin may be made a defendant to this bill, and answer specially and particularly every allegation above set forth, as if the same were again repeated; and your orators pray for such other and further relief as may seem just and right in the premises, and the United States most gracious writ of subpœna; and they will ever pray, &c.

F. L. SMITH,
Sol'r for complainants.

ALEXANDRIA COUNTY, *sct:*

George O. Dixion personally appeared before the subscriber, a justice of the peace in and for the county aforesaid, in the District of Columbia, and made oath that the allegations of the foregoing bill, so far as the same depends on his own knowledge, are true; and so far as the same depend on the information of others, he believes to be true.

Given under my hand this 6th day of September, 1844.

JOSEPH HARRIS, *J. P.*

Exhibit A, *in complainants' bill.*

A.

This indenture, made this twenty-eighth day of February, in the year eighteen hundred and forty-two, between James Irwin and Ann D., his wife, of the town of Alexandria, in the District of Columbia, and Thomas Irwin, of the town of Baltimore, in the State of Maryland, of the first part, and John Hooff, of the said town of Alexandria, of the second part, and William H. Irwin and Elizabeth Irwin and the President, Directors, and Company of the Farmers' Bank of Alexandria of the third part, witnesseth: that whereas the said James Irwin is justly indebted to the Farmers' Bank in the sum of three thousand three hundred and sixty dollars, by his certain note dated the 22d day of February, 1842, and payable sixty days after date to the said William H. Irwin, or order, which note is endorsed by the said William H. Irwin and the said Elizabeth Irwin. And whereas the said James Irwin

is willing to secure the payment of the said note, and any renewals which it may become necessary to make of the same to the said Farmers' Bank, and also to indemnify and save harmless the said William H. Irwin and Elizabeth Irwin, as the endorsers thereof and of the renewals of the same, of which they may from time to time become the endorsers. This indenture further witnesseth, that the said James Irwin and Ann D., his wife, in consideration of the premises, and of the sum of one dollar, to them in hand paid by the said John Hooff, the receipt whereof is hereby acknowledged, do hereby grant, bargain, and sell, alien, release, and confirm, unto the said John Hooff, all his, the said James Irwins', right, title, and interest in and to the warehouse situated at the foot of King street, and now in the occupancy of John Howard, and one-third of the wharf pier; which property was conveyed to the said James Irwin by the deed of partition between the heirs of the late Thomas Irwin, deceased, made and executed in the year 1831, and was afterwards conveyed in trust to the said Thomas Irwin to secure his mother, Elizabeth Irwin, in certain debts for which she had become responsible, as will more fully appear by reference to the said deed, of record in Alexandria county. The said property being also liable by the execution of certain other deeds, two in number, to the said Thomas Irwin, of Baltimore, to secure the said William H. and Elizabeth Irwin against their liability for certain other debts due by the said James Irwin.

To have and to hold the aforesaid warehouse and wharf pier to the said John Hooff, his heirs and assigns, to their only use forever. In trust, however, for the following purposes, and none other, that is to say: the said property hereby conveyed is to be applied, if need be, to the payment of the whole debt created by the promissory note above referred to, or the renewals thereof, before the payment of those debts intended to be secured by the herein before referred to deeds of trust to the said Thomas Irwin for the indemnity of the said William H. and Elizabeth Irwin, who do hereby for this purpose relinquish all preference, to which, by virtue of said deeds, they may be entitled, in favor of the aforesaid debt due to the Farmers' Bank, and hereby intended to be secured. The said James Irwin, his heirs and assigns, to retain possession and to receive the rents and profits of the aforesaid warehouse and wharf until a sale becomes necessary under the terms of this deed. And if the said James Irwin, or the said William H. and Elizabeth Irwin, shall at any time hereafter make default in the payment of the said note, or the renewals thereof, or of any instalments of the said note or renewals, then that the said John Hooff or his heirs, on the written request of the President and Directors of the said Farmers' Bank, or of the said William H. Irwin or Elizabeth Irwin, after giving not less than sixty days notice of the time, place, and terms of sale in some newspaper published in Alexandria, shall proceed to sell at public auction the premises before described for cash, or on such credit as the parties concerned may direct; and, after paying all reasonable charges and expenses of sale, shall, out of the money thence to arise, pay to the Farmers'

Bank whatever may be due and unpaid of the debt hereby intended to be secured, and the interest due thereon; and if any balance remain, shall pay over the same to the said William H. and Elizabeth Irwin, to be applied by them to the payment of the debts due and intended to be secured to them under the previous deeds of trust to Thomas Irwin as aforesaid, and shall convey the premises sold to the purchaser or purchasers.

Provided always, and on this condition, that if the said James Irwin, or his heirs, or the said William H. Irwin or Elizabeth Irwin, or the heirs of either of them, shall at any time before sale actually made, fully pay and discharge the said debt and interest, with all costs which shall accrue under this instrument, then this indenture shall become void, and all the estate hereby granted shall cease and determine.

And the said James Irwin, for himself and his heirs, doth hereby covenant with the said John Hooff, his heirs and assigns, that he, the said James Irwin, is at the time of the sealing and delivery hereof seized in his own right in a perfect and absolute estate in fee simple in the premises hereby conveyed, free from all incumbrance, other than the herein before referred to deeds of trust; and that he will at any time hereafter, at the request of the said John Hooff, execute and deliver any further deed which may be necessary more fully to convey to him the title of the said James Irwin in and to the before mentioned property, according to the true intent and meaning hereof. And they, the said James Irwin, William H. Irwin, and Elizabeth Irwin, for themselves and their heirs, do hereby further covenant with the said John Hooff, his heirs and assigns, to warrant and forever defend the title in the premises before described to the said John Hooff, his heirs and assigns, against the claims and demands of all persons claiming by, from, or under them.

In witness whereof the parties to this indenture have hereunto set their hands and seals the day and year first herein written.

JAMES IRWIN, [SEAL.]
ANN D. IRWIN, [SEAL.]
JOHN HOOFF, [SEAL.]
WM. H. IRWIN, [SEAL.]
ELIZABETH IRWIN, [SEAL.]
[SEAL.]

ALEXANDRIA COUNTY, *ss:*

We, Reuben Johnston and Edgar Snowden, justices of the peace in and for the county aforesaid, do hereby certify, that James Irwin, William H. Irwin, and Elizabeth Irwin, parties grantors, and John Hooff, party grantee, to a certain deed bearing date the 28th day of February, 1842, and hereto annexed, personally appeared before us, in our county aforesaid, the said James, William H. and Elizabeth Irwin, being personally well known to us as the persons who executed the said deed, and acknowledged the same to be their act and deed.

Given under our hands and seals this 28th day of April, 1842.

R. JOHNSTON, [SEAL.]
EDGAR SNOWDEN. [SEAL.]

ALEXANDRIA COUNTY, *ss:*

We, Reuben Johnston and Edgar Snowden, justices of the peace in and for the county aforesaid, do hereby certify, that Ann D. Irwin, the wife of James Irwin, party to a certain deed bearing date the 28th day of February, 1842, and hereto annexed, personally appeared before us, in our county aforesaid, the said Ann D. being personally well known to us as the person who executed the said deed, and being by us examined privily and apart from her said husband, and having the deed aforesaid fully explained to her, she, the said Ann D. Irwin, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this 28th day of April, 1842.

EDGAR SNOWDEN, [SEAL.]
R. JOHNSTON. [SEAL.]

Clerk's office, Alexandria county, May 3d, 1842. This deed received for record this day, and recorded in liber C, No. 3, page 199.

Teste : C. F. LEE, *C. C.*

B.

Exhibit B, in complainants' bill.

This indenture, made this twenty-first day of November, in the year eighteen hundred and forty-two, between John Hooff, of the town of Alexandria, in the District of Columbia, of the first part; Thomas Irwin, of the city of Baltimore, in Maryland, and Elizabeth Irwin and William H. Irwin, of the said town of Alexandria, of the second part; and George O. Dixion and John A. Dixion, of the said town of Alexandria, of the third part:

Whereas James Irwin, of the said town, being indebted to the Farmers' Bank of Alexandria in the sum of three thousand three hundred and sixty dollars, due by his certain note dated the 22d day of February, 1842, and payable sixty days after date to the said William H. Irwin, or order, and endorsed by the said William H. Irwin and Elizabeth Irwin, did, with Ann D., his wife, for the purpose of securing the payment of the said note, and any renewals which it might become necessary to make of the same, to the said Farmers' Bank of Alexandria, and for the further purpose of indemnifying his said endorsers, convey to the said John Hooff, by deed of bargain and sale, dated on the 28th day of February, 1842, duly recorded in liber C, No. 3, page 199, of the land records of Alexandria county, all his, the said James Irwin's, right, title, and interest in and to the warehouse situated at the foot of King street, and then and now in the occupancy of John Howard, and one-third of the wharf pier, the same being part of the said James Irwin's portion of the real estate of his late father Thomas Irwin, deceased, as allotted to him in and by the deed of partition between the devisees of the said Thomas Irwin, made and executed in the year 1835, (in the deed aforesaid to the said John Hooff erroneously said to

have been made in the year 1831,) to hold the same to the said John Hooff, his heirs and assigns, to their only use forever; in trust, however, for the purposes set forth in the said deed to the said John Hooff, and none other; and among other things in trust that, if the said James Irwin, or the said William H. or Elizabeth Irwin, should, at any time thereafter, make default in the payment of the said note, or the renewals thereof, or of any instalments of the said note, or renewals, the said John Hooff, or his heirs, on the written request of the President and Directors of the Farmers' Bank of Alexandria, or of the said William H. Irwin, or Elizabeth Irwin, after giving not less than sixty days notice of the time, place, and terms of sale, in some newspaper published in Alexandria, should proceed to sell, at public auction, the premises before described, for cash, or on such credit as the parties concerned might direct; and after paying all reasonable charges and expenses of sale, should, out of the money thence to arise, pay to the Farmers' Bank of Alexandria whatever should be due and unpaid of the debt so intended to be secured, and the interest due thereon; and if any balance remained, should pay over the same, as by the said trust deed directed, and should convey the premises sold to the purchaser or purchasers. And whereas a note, drawn by the said James Irwin, for three thousand three hundred and sixty dollars, dated the 27th day of April, 1842, and endorsed as aforesaid, which was given in renewal of the said first mentioned note, became due on the 29th day of June, 1842, and was duly protested for non-payment, and the same remaining unpaid, the said John Hooff was requested, in writing, by the President and Directors of the Farmers' Bank of Alexandria, holders of the said note, to make sale of the premises conveyed as aforesaid, for the purpose of satisfying the said debt and interest; who, accordingly, after giving sixty days notice of the time, place, and terms of sale, in the Alexandria Gazette, a newspaper published in the town of Alexandria, did expose the said warehouse and wharf pier to sale, at public auction, upon the premises, on Wednesday, the fifth day of the present month of October, at 12 o'clock meridian, upon the terms directed by the parties concerned, namely, one-third of the purchase money to be paid in hand, and the remainder in equal instalments at six and twelve months from the day of sale, the deferred payments to bear interest from said day, and to be secured by deeds of trust on the property sold; at which sale the warehouse aforesaid was struck off to the said George O. Dixion, for himself and the said John A. Dixion, for the sum of twenty-eight hundred and sixty dollars, that being the highest bid made therefor. And whereas the said George O. Dixion and John A. Dixion have paid into the Farmers' Bank of Alexandria (to be applied as a payment upon the aforesaid debt of the said James Irwin) the sum of nine hundred and fifty-three dollars and thirty-three and one-third cents, being the cash payment required as aforesaid. Now this indenture witnesses, that the said John Hooff, trustee as aforesaid, for and in consideration as well of the premises and of the sum of one dollar to him in hand paid by the said

George O. Dixion and John A. Dixion, the receipt of which is hereby acknowledged, as of the agreement made by them with the said John Hooff, (testified by their execution hereof,) to secure to him the payment of the deferred portions of the said twenty-eight hundred and sixty dollars, with interest as aforesaid, at the time aforesaid, by a good and sufficient deed of trust upon the premises to be hereby conveyed to them, does hereby grant, bargain, and sell to the said George O. Dixion and John A. Dixion, the warehouse aforesaid, with all rights and appurtenances to the same belonging, as fully as they were conveyed to him as aforesaid by the said James Irwin; the premises hereby intended to be conveyed, fronting the Potomac river, and being supposed to be bounded as follows, viz: beginning on the south side of King street at the northeast corner of the said warehouse, and running thence, southwardly, with the east front of the same, to the centre of the south wall; then with the centre of said south wall, westwardly, to the east side of the east wall of a warehouse, allotted by the said partition deed to William H. Irwin; then northwardly with the said east side of the last mentioned warehouse, and the east side of the warehouse by the same deed allotted to Mary Irwin, to King street; then eastwardly on King street to the beginning. To hold the same to the said George O. Dixion and John A. Dixion, their heirs and assigns forever, as tenants in common to their only use. And whereas the said James Irwin, before making the conveyance aforesaid to the said John Hooff, did, by deed dated on the day of , convey the premises hereby granted to the said Thomas Irwin, party hereto, in trust to secure the said Elizabeth Irwin certain debts, and against certain liabilities in the said deed particularly mentioned; and did, by another deed, dated on the day of , convey the same to the said Thomas Irwin, in trust to secure the said William H. Irwin certain debts, and against certain liabilities in this last mentioned deed particularly described. And whereas, although the said Elizabeth Irwin and William H. Irwin have, as parties to the said deed to the said John Hooff, waived and released all preference and liens upon the premises hereby conveyed in favor of the said Farmers' Bank of Alexandria, the title and estate so conveyed to the said Thomas Irwin, by the said two trust deeds, have not been released. Now this indenture further witnesses, that the said Thomas Irwin, by the direction of the said Elizabeth Irwin and William H. Irwin, respectively, as testified by their execution hereof, and in consideration of five dollars, to him in hand paid by the said George O. Dixion and John A. Dixion, the receipt of which is hereby acknowledged, does hereby grant, bargain, and sell, and release, to the said George O. Dixion and John A. Dixion, all the right, title, and estate in the premises hereby conveyed, vested in him by the said two trust deeds from the said James Irwin.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first herein written.

JOHN HOOFF, *Trustee.* [SEAL.]
[SEAL.]
ELIZABETH IRWIN, [SEAL.]
[SEAL.]
GEORGE O. DIXION, [SEAL.]
JOHN A. DIXION. [SEAL.]

Sealed and delivered in presence of—

ALEXANDRIA COUNTY, *sct:*

We, Joseph Harris and Reuben Johnston, justices of the peace in and for the county aforesaid, in the District of Columbia, do hereby certify, that John Hooff, Elizabeth Irwin, George O. Dixion, and John A. Dixion, parties to a certain deed bearing date on the 21st day of November, 1842, and hereunto annexed, personally appeared before us, in our county aforesaid, (the said John Hooff, Elizabeth Irwin, George O. Dixion, and John A. Dixion, being personally well known to us as the persons who executed the said deed,) and acknowledged the same to be their act and deed.

Given under our hands and seals, this 8th day of December, 1842.

JOS. HARRIS, [SEAL.]
R. JOHNSTON. [SEAL.]

Clerk's office, Alexandria county, January 31st, 1843. This deed received for record this day, and recorded in liber C, No. 3, page 272. Teste: CASSIUS F. LEE, *C. C.*

Exhibit C in the complainants' bill.—C.

This indenture, made this twenty-first day of October, A. D. eighteen hundred and forty-three, between John Hooff, of the first part, and George O. Dixion, and John A. Dixion, of the second part, all of the town of Alexandria, in the District of Columbia; whereas, the said parties of the second part being indebted to the Farmers' Bank of Alexandria in the amount of their two promissory notes, dated on the 5th day of October, 1842, one for the sum of nine hundred and fifty-three $\frac{33}{100}$ dollars, payable, with interest, six months after date, and [the] other for the sum of nine hundred and fifty-three $\frac{34}{100}$ dollars, payable, with interest, twelve months after date, did, for the purpose of securing the payment thereof, at the times aforesaid, by deed dated the eighth day of December, 1842, (of record in Alexandria county, in liber B, No. 3, page 457,) convey to the said John Hooff that warehouse and lot of ground at the foot of King street, and on the south side thereof, in the said town of Alexandria, then and now occupied by John Howard, with all rights, privileges, and appurtenances to the same belonging, as the same were conveyed to the said parties of the second part by deed from the said John Hooff (trustee of James Irwin,) and others, dated on the 21st day of November, 1842: To hold the same to the said John Hooff, his heirs, and assigns, to their only use forever. In trust, however, for

the purposes in the said deed of the 8th of December, 1842, set forth, and none other; but upon this express proviso and condition, that if the said parties of the second part should, at any time before a sale should be actually made in pursuance of the terms of the said trust deed, fully pay the debt aforesaid, with interest as aforesaid, and all costs and charges which should have accrued under the said deed, then that the said deed should become void, and all the estate thereby granted should cease and determine. And whereas the said parties of the second part have fully paid the said debt and interest to the Farmers' Bank of Alexandria, with all costs and charges as aforesaid. Now this indenture witnesses, that the said John Hooff, in consideration of the premises, and of one dollar to him paid by the said parties of the second part, of which he does hereby acknowledge the receipt, and in pursuance of an order of the President and Directors of the said bank, made in meeting on the 23d day of October, 1843, a copy of which is hereto annexed, does hereby grant, bargain, and sell, and release to the said parties of the second part, the warehouse and lot of ground, rights, privileges, and appurtenances conveyed to him as aforesaid; to hold the same to the said parties of the second part, their heirs and assigns, to their only use forever.

In witness whereof, the said John Hooff has hereto set his hand and seal the day and year first herein written.

JOHN HOOFF, *Trustee*. [SEAL.]

Sealed and delivered in presence of—
R. JOHNSTON,
WM. N. MILLS.

ALEXANDRIA COUNTY, *to wit:*

We, Reuben Johnston and William N. Mills, justices of the peace in and for the county aforesaid, in the District of Columbia, do hereby certify, that John Hooff, party to a certain deed bearing date on the 21st day of October, 1843, and hereunto annexed, personally appeared before us, in our county aforesaid, (the said John Hooff being personally well known to us as the person who executed the said deed,) and acknowledged the same to be his act and deed.

Given under our hands and seals, this 27th day of October, 1843.

R. JOHNSTON, [SEAL.]
WM. N. MILLS. [SEAL.]

At a meeting of the President and Directors of the Farmers' Bank of Alexandria on the 23d day of October, 1843, it was ordered, that John Hooff, trustee in the deed of trust given by George O. Dixion and John A. Dixion, under date of the 8th of December, 1842, to secure to this bank the payment of their two notes in the said deed described, do release and convey to them the property by the said deed conveyed to him, they having fully paid the said two notes, and interest thereon, with all costs and charges which have accrued under the said deed.

A true copy from the minutes of the president and directors, as wit-
[L. S.] ness the seal of the said bank hereto annexed.

Clerk's office, Alexandria county, October 30th, 1843. This deed received for record this day, and recorded in liber D, No. 3, page 338.

Teste: CASSIUS F. LEE, *C. C.*

(Judge's Endorsement.)—*Judge's Endorsement.*

Upon filing bill and the exhibits therein referred to, and the bond of the complainants to the defendant, in the penalty of four hundred dollars, with good security, to be approved by the clerk of this court in Alexandria, conditioned to pay all such damages and costs as the said defendants, or any of them, may sustain or incur by reason of this injunction, if the same should be dissolved, let the injunction issue as prayed, until the further order of this court.

Sep. 7th, 1844. W. CRANCH.

Bond.—*Injunction Bond.*

Know all men by these presents, that we, George O. Dixion, John A. Dixion, and John Manery, are held and firmly bound unto William H. Irwin, in the full and just sum of four hundred dollars, to the payment whereof, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 7th day of September, 1844.

The condition of the above obligation is such, that whereas the said George O. Dixion and John Dixion hath obtained an injunction in chancery, from the honorable William Cranch, chief judge of the United States circuit court of the District of Columbia, to stay further proceedings of the said William H. Irwin, his agents, workmen and servants, and all others, from erecting any nuisance and obstruction in front of, or near or opposite to, and between the said property and the river Potomac, or any gates or enclosures in the said strand between the eastern front of the said Dixion's property and the said river; and should the same be erected before the serving of this injunction, the same may be removed. Now, if the said George O. Dixion and John A. Dixion, their heirs, executors, and administrators, do and shall well and truly perform the decree of the said court, and shall well and truly pay all money and costs due or to become due to the said William H. Irwin, as shall be awarded against him in case the said injunction shall be dissolved, then the above obligation to be void, or else to remain in full force and virtue in law.

GEO. O. DIXION, [SEAL.]
JOHN A. DIXION, [SEAL.]
JOHN MANERY. [SEAL.]

Sealed and delivered in presence of—
ROBERT M. MINOR,
D. MINOR.

Approved. CASSIUS F. LEE, *C. C.*

Upon the filing of the aforegoing bill, exhibits, and bond, a subpœna issued, which with the endorsement and return thereon is as follows:

Subpœna.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the marshal of the District of Co-
[L. S.] lumbia, greeting:

You are hereby commanded to summon William H. Irwin to appear before the honorable judges of the circuit court of the District of Columbia, for the county of Alexandria, at the court-house of the said county, in the town of Alexandria, at the next court, to answer a bill of injunction in chancery exhibited against him by George O. Dixion and John A. Dixion, and this he shall in no wise omit, under the penalty of $333 33; and have then there this writ.

Witness the honorable William Cranch, chief judge of our said court, this 7th day of September, 1844.

CASSIUS F. LEE, *C. C.*

(Endorsement.)

The object of the complainants' bill is to enjoin and restrain the defendant, his agents, workmen and servants, and all others, from erecting any nuisance and obstruction in front of, or near to, or opposite to and between the property of plaintiffs and the river Potomac, or any gates or enclosures in the said strand between the eastern front of the plaintiffs' property and the said river, and that should the same have been erected before the serving of this injunction, the same to be removed, until the further order and decree of the court.

Teste: CASSIUS F. LEE, *C. C.*

(Marshal's return.)

"Executed 7th September, 1844."

"D. MINOR, *D. M.*"

Amended bill filed.

And on another day, to wit, on the 21st day of September, 1844, came the complainants aforesaid, by their solicitor aforesaid, and filed their amended bill against the said defendants, which is in the words and figures following:

Amended bill.

To the honorable judges of the United States circuit court, for the District of Columbia, sitting in chancery, in the county of Alexandria.

Humbly complaining, sheweth unto your honors your orators, George O. Dixion and John A. Dixion, who by way of amendment to their original bill, filed in this honorable court against one William H. Irwin, on the 7th day of September, 1844, and to which reference is hereto particularly made, state and charge in this their amended bill, that after the

injunction prayed for in said original bill was granted in favor of your orators, against the said Irwin, by his honor, William Cranch, chief judge of this honorable court, your orators, in compliance with the order of the said judge granting the same, executed a bond with good security in the penalty of four hundred dollars, and payable to the said Irwin, which said bond is on file with the papers of said original bill; whereupon a subpœna was issued by the clerk of the United States circuit court, for the said county of Alexandria, with an order thereon endorsed, in accordance with the prayer of the said original bill. Your orators state and charge that the said subpœna and order of injunction was served by Daniel Minor, deputy marshal in and for the said District of Columbia, on the said Irwin, in the forenoon of the said 7th day of September, 1844; and that the said Irwin, in the presence of the said officer, peremptorily refused to obey the said order of injunction so granted as aforesaid, either by abating the nuisance complained of, which at the time of the service of said order had been chiefly constructed, and was nearly completed, but also in violation of said order, proceeded after the same was served on him as aforesaid, in contempt and disregard of the power and authority of this honorable court, to have the said nuisance and obstruction entirely completed by carpenters and workmen, acting under the immediate personal control and direction of said Irwin. Your orators charge, that the said obstruction and nuisance, erected by said Irwin, (the erection of which, or some such, the said original bill and order of injunction were intended to prevent,) consists of a close fence and enclosure, built of thick wooden boards, or plank, nailed to posts or pieces of timber, firmly planted in the ground; that said fence is upwards of eight feet high, and encloses a space of the public street, the exact dimensions of which will be shown to your honors by ample testimony. The north line of said fence is built up to the eastern wall of your orators' said warehouse, and extends thence into the public street, eastwardly, towards the river Potomac about twenty-five feet; thence southwardly, and nearly at right angles with the said line, about twenty-six feet; thence westwardly, and parallel with the first named line, about twenty-five feet, to the eastern front wall of the warehouse assigned to John E. Carey and Ann J. Carey, his wife, in the deed of partition between the heirs of Thomas Irwin, deceased, hereinafter more particularly referred to; that the said fence and enclosure covers and embraces about eight feet of the east front wall of your orators' said warehouse, is built between it and the river Potomac, and obstructs a window in the eastern front of said warehouse, which has been used for admitting light therein ever since said warehouse was built, which, as your orators believe and charge, was about the year 1804. The said fence also obstructs an ancient window in the warehouse of said Carey and wife, and covers about the same extent of the eastern front wall of their said warehouse.

Your orators will exhibit in evidence to your honors a plat, showing the relative position of said obstruction with reference to their said warehouse and the river Potomac. Your orators repeat the allegation

contained in their said original bill, that the ground covered by this said obstruction has been used [as] a public street and common highway for upwards of thirty years; and they further charge, that the use of said ground has been dedicated to the public, as an open street and common highway, by the consent of all persons interested in said property, and of the different owners of the fee simple title of the lots of ground adjoining and binding thereon, and of those heretofore claiming title to the said warehouse and lot now owned by your orators, for and during the period aforesaid. That by such dedication and permissive use, the right and privilege of passing over the ground (in front of and adjoining your orators' said lot and warehouse) upon which the said obstruction is erected, has been enjoyed by the public, as a common highway and open street, during the period aforesaid, for all persons using the same with their horses, carriages, wagons, carts, and drays of every description, to pass or stand upon, to receive lading, and for doing business of merchandise or other business. Your orators charge that the easement and privilege of using the said ground as a pass-way and thoroughfare, has accrued to the public by the long and uninterrupted use and dedication thereof as aforesaid, and cannot now be lawfully interfered with or controlled. They farther charge, that the said fence and enclosure is a public nuisance, and is of special and irremediable injury to your orators' said warehouse and property; and that the said obstruction is a private nuisance, in so far as the same obstructs the ancient lights of their said warehouse. They charge that the said nuisance is highly detrimental to their rights and interests, in delaying and interrupting certain alterations and repairs in said warehouse contemplated by your orators, is of great damage to their said warehouse and property continuous and irreparable; and the more especially as the said William H. Irwin holds no property in his own right, known to your orators, which would be liable to satisfy any judgment which your orators might recover against him in a suit at common law, for damages done them by the obstruction and nuisance aforesaid. The said warehouse and lot, now owned by them as aforesaid, was conveyed and assigned to the said James Irwin, with other property, in right of his proportion of the real estate of which his father, the said Thomas Irwin, died possessed. Your orators charge that the said William H. Irwin is a party to said deed, and that the said property now owned by your orators, is described in said *said* deed by metes and bounds, and the said warehouse as being on the south side of King street, and fronting the river, meaning the river Potomac. That the said William H. Irwin is estopped by the said deed (without the fact alleged, that the ground in front of said warehouse and property on the east is a public highway,) from building or otherwise placing obstructions thereon, or of appropriating to his individual use any ground between the eastern front of the said warehouse and the river Potomac. Your orators herewith file, as exhibit (D,) a duly certified extract of the said deed of partition among the heirs of the said Thomas Irwin, deceased. Your orators charge that the said obstruction and nuisance is still standing, and that the said

1262

William H. Irwin positively refuses to remove the same, or to permit it to be removed by others, whereby your orators are greatly injured and aggrieved as aforesaid. Now, as your orators are wholly without remedy in a court of common law, and are only relievable in a court of equity, where matters of this kind are properly cognizable, they pray that the said William H. Irwin may, on his corporal oath, answer this amended bill, and that in answering he specially state, whether the ground on which he has erected said fence and enclosure above described, has not been used as a public street and common highway, for thirty years and upwards; and whether during that time the privilege and easement of using and passing over the same, by the public, has not been free and uninterrupted; and also whether he is not a party to the said deed of partition among the heirs of Thomas Irwin, deceased, dated on the 15th day of January, 1835, and whether the extracts herewith filed are not true copies from said deed; and that he further answer and say, whether he has not erected the said fence and enclosure herein described; and whether he has not refused to obey the order of injunction directing the same, if erected, to be abated; and whether he has not also violated said order, by continuing to have additional work done on the said fence, after the said order of injunction was served on him as aforesaid.

Your orators pray that your honors will grant a rule against the said William H. Irwin to show cause why he shall not be attached for contempt in refusing to obey the said order of injunction granted in this cause as aforesaid. Your orators further pray that your honors will order and decree that the said obstruction and nuisance be forthwith abated, pulled down, and removed from the said public street, and that the said William H. Irwin be perpetually injoined and restrained from erecting any other obstruction or nuisance over the said ground so long as the same shall be used as a public highway. And your orators pray the United States most gracious writ of subpœna on this amended bill may be awarded against the said William H. Irwin, and for such other and further relief as may seem just and right in the premises; and they will ever pray, &c.

FRANCIS L. SMITH,
Sol. for comp'ts.

ALEXANDRIA COUNTY, *sct:*

George O. Dixion, one of the complainants in the foregoing bill, personally appeared before the subscriber, a justice of the peace in and for the county aforesaid, in the District of Columbia, and made oath, in due form of law, that the allegations in said bill contained, so far as the same depend on his own knowledge, are true; and so far as they depend on the information of others, he believes to be true.

Given under my hand, this 21st day of September, 1844.

EDGAR SNOWDEN, *J. P.*

Exhibit D, deed of partition.

D.

This indenture, made this 15th day of January, in the year one thousand eight hundred and thirty-five, between James Irwin and Ann D., his wife, of the town of Alexandria, in the District of Columbia, of the one part; William H. Irwin, of the same town, of the second part; Mary Irwin, of the same town, of the third part; Hannah Wilson, of the same town, of the fourth part; Thomas Irwin and Ellen, his wife, of the city of Baltimore, in the State of Maryland, of the fifth part; John E. Cary, and Ann J. Cary, of the said city of Baltimore, of the sixth part; and George S. Gibson and the said Thomas Irwin, both of the said city of Baltimore, of the seventh part. Whereas Thomas Irwin, deceased, late of the town of Alexandria aforesaid, by his last will and testament, of record in the orphans' court of the county of Alexandria, devised all his estate, real, personal, and mixed, to his children and heirs at law, to be equally divided among them, upon the youngest child, William H. Irwin, attaining the age of twenty-one years; and whereas the said William H. Irwin has attained his said age, and the devisees and heirs of said Thomas have agreed to make of all the real estate of which the said Thomas Irwin, deceased, died seized, including annuities and rent charges, and by them, the said James Irwin, William H. Irwin, Mary Irwin, Hannah Wilson, Ann J. Carey, and Thomas Irwin, held under the said will; and whereas the said John E. Carey and Ann J., his wife, did, by their deed dated the 10th day of August, in the year one thousand eight hundred and twenty-nine, convey to the said George S. Gibson and Thomas Irwin, jr., of the city of Baltimore, and the survivor of them, and the heirs, executors, and administrators of such survivor, all their, his, and her undivided interest or sixth part of the said estate, real, personal, and mixed, in trust for the sole use, benefit, and behoof of the said Ann J. Carey, as if she were a feme sole and unmarried, and for such uses, intents, and purposes as she might and may direct and appoint by deed or any writing under her hand.

Now this indenture witnesseth, that the said James Irwin and Ann D., his wife, William H. Irwin, Mary Irwin, Hannah Wilson, Thomas Irwin, and Ellen his wife, and John E. Carey and Ann J., his wife, have agreed to make partition of the real estate, land, annuities, and rent charges devised *by* them, as aforesaid, from their father, the said Thomas Irwin, deceased, and do, by these presents, make full, perfect, and absolute partition of all and singular the same, as is more particularly allotted and described in the schedule hereto annexed as a part of this deed, with each, all, and every the rights, privileges, and appurtenances, grants, covenants, claims, and conditions whatever, to each and all of the said lots, pieces of ground, annuities, and rent charges belonging or in any wise appertaining, subject only to the right of dower of Elizabeth Irwin, widow of the said Thomas Irwin, deceased, in and to all and singular the same; that is to say, that James Irwin, his heirs, and assigns, shall have, hold, possess, and enjoy, in severalty, to his and

their only proper use forever, all that part of said real estate, lots of ground, annuities, and rent charges contained and described in lot No. 1 (number one) of the said schedule, and one undivided third part of the property contained and described in lot No. 7 (number seven) of the said schedule, subject only to the said right of dower; and the said William H. Irwin, his heirs, and assigns, shall have, hold, possess, and enjoy, in severalty, to his and their only proper use forever, all that part of the said real estate, lots of ground, annuities, and rent charges contained and described in lot No. 2 (number two), and one undivided third part of the property contained and described in lot No. 7, (number seven,) in the said schedule, subject only to the said right of dower; and for owelty of partition one hundred dollars $\frac{5}{100}$. Mary Irwin, her heirs and assigns, shall have, hold, possess, and enjoy, in severalty, to her and their only proper use, forever, all that part of the said real estate, lots of ground, annuities, and rent charges, contained and described in lot No. 5, (number five,) and one undivided third part of the property contained and described in lot No. 8, (number eight,) in the said schedule, subject only to the right of dower, and for owelty of partition she shall receive twenty-five dollars and forty-six cents. And that the said Hannah Wilson, her heirs and assigns, shall have, hold, possess, and enjoy, in severalty, to her and their only proper use forever, all that part of the said real estate, lots of ground, annuities, and rent charges in lot number 4, (number four,) and one undivided third part of the property contained and described in lot No. 8, (number eight,) in the said schedule, subject only to the said right of dower; and for owelty of partition shall receive ninety dollars and seventy-one cents. And that the said Thomas Irwin, his heirs and assigns, shall have, hold, possess, and enjoy, in severalty, to his and their only proper use forever, all that part of the said real estate, lots of ground, annuities, and rent charges, contained and described in lot No. 6, (number six,) and one undivided third part of the property contained and described in lot No. 8, (number eight,) of the said schedule, subject only to the said right of dower; and for owelty of partition shall receive one hundred and thirty-four dollars and thirty-eight cents. And the said Thomas Irwin and George S. Gibson, and the survivor of them, and the heirs and assigns of such survivor, shall and may have, hold, possess, and enjoy, in severalty, to their use forever, all that part of the said real estate, lots of ground, annuities, and rent charges contained and described in lot No. 3, (number three,) and one undivided third part of all that property contained and described in lot No. 7, (number seven,) of the said schedule; and for owelty of partition the sum of one hundred and eleven dollars and forty-six cents, for the limitations, uses, intents and purposes, powers and provisions, of the said deed from John E. Carey and Ann J., his wife, to them, dated the 10th day of August, one thousand eight hundred and twenty-nine, and for her sole use, benefit, and behoof, according to the provisions of the said deed, as if she were a feme sole and unmarried.

And the said parties of the sixth first parts to this indenture, several-

ly, separate and apart from the other parties to the same, do, for themselves, himself, and herself, to their, his, and her respective heirs, executors and administrators, grant, release, and confirm to the parties of the other part severally, and their several heirs and assigns, the said pieces of property, annuities, and rent charges, in the said allotments severally made to them, and described as aforesaid in the said schedule, with all the rights, privileges, and appurtenances, grants, covenants, claims, and conditions whatever, to all and singular the same belonging or appertaining, subject to the said dower right of the said Elizabeth Irwin; and all the claim, estate, right, title, and demand of them, him, and her, of, in, and to the same, and every part and parcel thereof. And that the said Thomas Irwin and George L. Gibson, trustees as aforesaid of the said Ann J. Carey, by virtue of the powers vested in them by the said deed of trust, and by the direction of the said Ann J. Carey in writing, more particularly manifested by her execution of these presents, do hereby grant, release, and confirm to the parties of the five first parts severally, and their several heirs and assigns, the parts and portions of property respectively by this deed to him and her allotted. And the said parties of the six first parts to this deed severally, separate and apart from the other parties, do, for themselves, himself, and herself, and their heirs, and her respective heirs, executors, and administrators, covenant and agree, to and with each other severally, and their, his, and her heirs and assigns, that he and she severally, and their, his, and her several heirs, executors, and administrators, will warrant and defend, each to the other, one sixth part of the said lot of ground, annuities, and rent charges, as hereby allotted and conveyed in severalty, at the value affixed to each of the same, by an agreement in writing interchanged by the parties, and bearing an equal date herewith, and by the said parties signed, against the claim and demand of all persons whatever; and it is distinctly understood and agreed, and provided, by and between the said last mentioned parties, that in the event of any of them, his or her heirs and assigns, being evicted from any lot, piece, or parcel of ground, to them, him, or her hereby granted and allotted, in consequence of any defect or insufficiency of title, or want of title existing prior to the date hereof, then, and in such case, each of the other parties, their, his, and her heirs, executors, and administrators, shall, upon such eviction, pay to the party so evicted, their, his, or her heirs, the amount and value at which the said property was assessed and valued as aforesaid; or should they, and their several heirs, executors, and administrators, prefer and elect to reinstate the party evicted, their, his, or her heirs and assigns in the possession of the property from which he, she, or they may have been evicted, and shall also make a good and sufficient title, with warranty for the same, then, and in such case, they shall have full power so to do; but until election payment, making good such title, and giving full, free, and quiet possession of the property so lost to the party evicted, his, her, or their heirs, each of the said parties, his, her, and their heirs, executors, and administrators, shall pay to the said party evicted, his, her, or their heirs and assigns, an annual or propor-

tionate sum, say equal to one sixth part of the nett rents, issues, and profits which the said property may yield, from and after such eviction; the same to be paid according to the time and times of payment of rent on said property prior to such eviction; provided, however, that in the estimate of such rents and profits, none derived from and increased by any improvements which hereafter [may] be placed on said property, shall be considered or included.

And further, it is agreed that in all suits and actions which may be brought and instituted against the said parties, or any or either of them, their, his, and her heirs and assigns, for any defect, default, or insufficiency of title and adverse claim to the said property, or any lot, part or parcel of the same, hereby allotted and conveyed in severalty, or to any of the parties in common, the said parties severally and for themselves, himself, and herself, their, his, and her heirs and executors and administrators, will contribute and pay an equal share or proportion of all costs, fees, charges, and expenses for the purpose of defending or prosecuting such suit or action for the purpose of protecting his or her title as aforesaid.

And, lastly, that they and she, their, his, and her heirs, severally, will at any time and all times, execute and deliver to any of the said parties so requiring it, their, his, and her heirs and assigns, any further reasonable conveyance or assurance for more fully assuring the title to all and singular the property hereby conveyed; such conveyance to be made at the cost and charge of the person or persons so requiring it or them.

In witness whereof the parties hereto have set their hands and seals the day and year above written.

JAMES IRWIN, [L. S.]
ANN M. IRWIN, [L. S.]
WM. H. IRWIN, [L. S.]
MARY IRWIN, [L. S.]
HANNAH WILSON, [L. S.]
THOMAS IRWIN, Jr., [L. S.]
JOHN E. CAREY, [L. S.]
ANN J. CAREY, [L. S.]
ELLEN IRWIN, [L. S.]
GEORGE S. GIBSON, *Trustee.* [L. S.]
THOMAS IRWIN, Jr., *Trustee.* [L. S.]

Sealed and delivered in presence of—as to J. Irwin, Wm. H. Irwin, Thos. Irwin, John E. Carey and Ann E. Carey, his wife, Mary Irwin, Hannah Wilson, and Thomas Irwin, trustee:

JOHN RICHARDS,
O. FAIRFAX,
WM. LUDWELL HODGSON.

Signed, sealed, and delivered in presence of—as to Geo. S. Gibson, *in presence of*—

R. B. MAGRUDER.

STATE OF MARYLAND,
Baltimore city, sct:

I, Richard B. Magruder, one of the associate judges of the sixth judicial district of the State of Maryland, and also of Baltimore county court, being a court of law of the State of Maryland, held in and for the county of Herford and for the county of Baltimore, which said court is a court of law and record, do hereby certify, that John E. Carey, Thomas Irwin, jr., and George S. Gibson, parties to the annexed deed of partition between them and James Irwin, William H. Irwin, Mary Irwin, Hannah Wilson, and Ann J. Carey, the said James, William, Mary, and Hannah residing in Alexandria, in the District of Columbia, and the said other parties in the county of Baltimore, in the State aforesaid, bearing date the 15th day of January, 1835, personally appeared before me, in the said State and city of Baltimore, and severally acknowledged that they had executed and delivered the said deed as their several act and deed. And I do further certify, that the said John E. Carey, Thomas Irwin, jr., and George S. Gibson are personally known to me; and I further certify, that I did make known to Ellen Irwin, wife of said Thomas Irwin, (on the 18th day of March, in the present year,) also a party grantor to the said deed, the contents of the same, and examined her privily and apart from her husband, the said Thomas Irwin, and out of his presence and hearing, when she, the said Ellen, acknowledged to me that she had executed and delivered the said deed voluntarily and without being induced to do so by fear or threats of ill usage by her said husband, or fear of his displeasure; and I further certify, that the said Ellen is personally known to me.

In witness whereof I have set my hand and seal, this 18th day of March, 1835.

RICH'D B. MAGRUDER. [L. S.]
Assistant judge sixth judicial district.

STATE OF MARYLAND, *Baltimore, sct:*

I, Thomas Kell, clerk of Baltimore county court, in the State of Maryland, which said court is also a court of record, do hereby certify, that Richard B. Magruder, whose signature is subscribed to the above certificate, was, at the day of the date thereof, a judge of the said court.

In testimony whereof I have subscribed my name, and affixed the [L. S.] seal of my said court, this 18th day of March, 1835.

THOMAS KELL.

DISTRICT OF COLUMBIA,
Alexandria county, sct:

[L. S.] The United States of America, to Adam Lynn, Newton Keene, and George Wise, gentlemen, justices of the county of Alexandria, greeting:

Whereas James Irwin and Ann D. Irwin, his wife, by certain indenture of partition, bearing date the 15th day of January, 1835, have sold

and conveyed, and made partition of, certain lands, tenements, hereditaments, annuities, and rent charges, of which Thomas Irwin, deceased, late of the town of Alexandria, father of the said James Irwin, died seized and possessed, with and unto Thomas Irwin, jr., William H. Irwin, Mary Irwin, Hannah Wilson, and Ann J. Carey, wife of John E. Carey, children and heirs at law of the said Thomas Irwin, deceased, in and by the within and annexed deed, with the appurtenances, situate, lying, and being in the county of Alexandria; and whereas the said Ann D. Irwin cannot conveniently travel to our United States circuit court of the District of Columbia, for the county of Alexandria, to make acknowledgment of the said conveyance; therefore, we do give unto you, or any two or more of you, power to receive the acknowledgment which the said Ann D. Irwin shall be willing to make before you of the conveyance aforesaid, contained in the said indenture which is hereto annexed; and we do therefore desire you, or any two or more of you, to go to the said Ann H. Irwin, and receive her acknowledgment of the same, and examine her privily and apart from the said James Irwin, her husband, whether she doth the same freely and voluntarily, without his persuasion or threats, and whether she be willing the said indenture, together with this commission, shall be recorded in our court; and when you have received her acknowledgment and examined her as aforesaid, that you distinctly and openly certify us thereof in our said court, under your hands and seals, sending then there the said indenture and this writ.

Witness the honorable William Cranch, chief judge of the said court, this 2d day of May, 1835.

EDM. I. LEE, *C. C.*

DISTRICT OF COLUMBIA, *sct:*

To the honorable the United States' judges of the circuit court of the District of Columbia:

The subscribers, justices of the peace for the county of Alexandria, do respectfully certify, that under the authority of this commission we examined Ann H. Irwin, wife of James Irwin therein named, privily and apart from her said husband, respecting the execution of the indenture annexed and within described, which we shewed and explained to her; on which examination she acknowledged that she had willingly and of her own accord signed and sealed the same, and consented to its being duly recorded.

Certified under our hands and seals this 2d of May, 1835.

ADAM LYNN, [L. S.]
NEWTON KEENE. [L. S.]

Lot No. 1.—*Allotted to James Irwin in severalty.*

1. A warehouse on the south side of King street and fronting the river; beginning on King street, at the northeast corner of the said warehouse, and running thence, southwardly, with the east front of the same, to the centre of the south wall, between which wall and the warehouse

south of it (by this deed alloted to Ann J. Cary,) is an alley or open space; then with the centre of said south wall westwardly, to the east side of the east wall of a warehouse by this deed assigned to William H. Irwin; then northwardly with the said east side of the said last mentioned warehouse, and the east side of the warehouse hereby assigned to Mary Irwin, to King street; thence eastwardly on King street to the beginning.

2. Also one undivided third part of the wharf property and pier, on the east side of the warehouse above allotted to the said James, and of a warehouse and open space on the south adjoining to the same allotted to William H. Irwin, and of another warehouse to Ann J. Carey, binding westwardly on the line east of the same, and thence east to the river Potomac, with a third part of all the rights, privileges, and appurtenances to the said wharf property belonging or in any wise appurtaining. The said warehouse and the said undivided third part of the wharf property, being part of a lot of ground conveyed to the said Thomas Irwin, deceased, being parts of a lot of ground granted to him and John Dunlap, by William Herbert and John C. Herbert, as tenants in common, by deed bearing date the 25th day of June, 1802. The moiety of John Dunlap was conveyed to the said Irwin by James Dunlap, one of the devisees of the said John Dunlap, by deed dated the 20th day of January, 1808, and by Charles J. Catlett, trustee of Samuel Dunlap, an insolvent, by deed dated the 7th of July, 1813. The said Samuel and James being the sole devisees and heirs at law of the said John Dunlap.

Lot No. 3.—*Allotted to William H. Irwin in severalty.*

1. The centre warehouse on the east side of Union and south side of King streets, lying between King street and an alley running east from Union street to the wharf, which alley commences at the distance of seventy-three feet from King street, beginning on the east side of Union street, at the centre of the north division wall of the warehouse by this deed allotted to Thomas Irwin; then north with Union street, to the centre of the division wall of the warehouse by this deed allotted to Mary Irwin; then east, through and with that wall as a division wall, to the east side of the old block of warehouses fronting on Union Street, (of which the warehouse now described is one;) then south, with the said east line, to the centre of the south wall of the warehouse hereby allotted to James Irwin; then east, with the centre of the said wall, to the west line of the wharf lot hereby assigned to the said James Irwin, Wm. H. Irwin, and Ann J. Carey, in common; then south, with the west line of the wharf, to the centre of the north wall of the warehouse by this deed allotted to Ann J. Carey; then west, with the centre of the said wall, to the east side of the wall of the said old block of warehouses fronting on Union street; then south, with the east side of said block of warehouses, to the centre of the north wall of the warehouse hereby allotted to Thomas Irwin, then west, with the centre of the said wall, to the beginning. It being distinctly understood and agreed that the centre of all the walls afore-

said, running from east to west, are to be considered and held as the lines of division between the several lots now standing on the lot of ground conveyed as aforesaid to the said Thomas Irwin, deceased, by the said William Herbert, John C. Herbert, James Dunlap, and Charles J. Catlett; and particularly that it shall and may be lawful for the said William H. Irwin, his heirs and assigns, at any and all times hereafter, to close up all windows and appertures now being in the south wall and side of the said warehouse allotted hereinbefore to the said James Irwin; and also all windows and appertures in the north wall and side of the warehouse allotted to Ann J. Carey, (on the south side of the eastern portion of the lot now allotted to the said William H. Irwin,) without the let, hindrance, or molestation of them, the said James Irwin and Ann J. Carey, and of any person or persons claiming from, by, through, or under them, or any of them.

And that it shall and may be lawful for the said William H. Irwin, his heirs and assigns, at any and all times hereafter, to build and carry up the said last mentioned division north and south walls, and any part and parts thereof, as he and they may from time to time, and at all times, think proper, for the purpose of building over the vacant space belonging to his said warehouse; but any and all walls so to be erected by him or them, shall be by him or them so erected as to furnish an equal portion of wall on each side of the said central division lines. Provided, however, that in case the said William H. Irwin, his heirs and assigns, shall carry up and build the said walls as aforesaid, that he and they shall, at his and their own expense, cost, and charge, wall, and sufficiently secure and protect the roofs of the said warehouses by this deed allotted to the said James Irwin and the said Ann J. Carey, adjoining the warehouse now allotted to him, from all damage and injury and exposure to leaking, which may or shall be caused at any and all times hereafter, in consequence of any carrying up and erection of the walls aforesaid, to be executed, or which may be executed as aforesaid; and further, that the said James Irwin, his heirs and assigns, and the said Ann J. Carey, her heirs and assigns, shall at any and all times after any such erection or building on said walls as aforesaid, have the privilege and use of the said walls, should they or either of them determine to raise or build on the walls of their respective warehouses, for the purpose of enlarging the same, first paying to the said William H. Irwin, his heirs and assigns, one half of the cost which he may have incurred on the wall or walls, or such part thereof, as they, or any of them, may use as aforesaid.

2nd. Also one undivided third part of the wharf property and pier, on the east side of the east line of the lot above allotted to him, and of the warehouse allotted as aforesaid to James Irwin, and of a warehouse fronting east on said wharf, allotted to Ann J. Carey, binding east on the east lines of the same, and then east into the river Potomac, with one third of all the rights, privileges, and appurtenances to the same belonging or in anywise appertaining. The said two first pieces of property being parts of a larger lot of ground, convey-

ed to Thomas Irwin, sen., as is more particularly stated in the allotment to James Irwin.

8th. And it is further understood and agreed, that the said Ann J. Carey and James Irwin, their several heirs and assigns, shall at any time and times, have full liberty of raising the north side of the said Ann J. Carey's warehouse, and the south wall of the said James Irwin's warehouse, for the purpose of enlarging their said warehouses respectively, or either; and that the said William H. Irwin, whose warehouse lot, as described in No. 1 of his allotment, lies between the said warehouses, may use the said walls upon the same terms and conditions upon which the said Ann J. Carey, and her heirs and assigns, and the said James Irwin, and his heirs and assigns, are permitted to use the walls which may be erected by the said William H. Irwin, as is more particularly mentioned in his said allotment No. 1.

Lot No. 3, allotted to Ann J. Carey, in severalty.

1st. The warehouse on the north side of a twenty-feet alley, running east from Union street to the wharf, which alley is at the distance of seventy-three feet to the south of King, at *at* its intersection with Union street, and bounded thus: beginning at the southeast corner of said warehouse on said alley; then north, with the east front of the same, to the centre of its north wall; then west, with the centre of said wall, to the east wall of the warehouse hereby allotted to the said William H. Irwin; then south [to] the east side of the said warehouse assigned to said Irwin, and of the adjoining warehouse allotted to Thomas Irwin, to the said alley; then with that alley east, to the beginning.

2nd. One undivided third part of the wharf property and pier on the east side of the warehouse above allotted to the said Ann, and of the warehouses allotted to the said James and William H. Irwin, and binding westwardly on the east line of the same, and thence east into the river Potomac, with a third of all rights, privileges, and appurtenances to the said wharf property belonging or in anywise appertaining; the said two pieces of property being parts of a lot of ground conveyed to Thomas Irwin, deceased, by William Herbert and John C. Herbert, by deed of June 25th, 1802, as tenant in common with John Dunlap, and after the death of the said John, his moiety was conveyed to said Thomas by James Dunlap, by deed of January 20th, 1808, and by Charles J. Catlett, by deed of July 17th, 1813.

Lot No. 5, allotted to Mary Irwin in severalty.

3d. A three-story brick and stone warehouse, on the east side of Union street, and south of King at their intersection, with the lot on which the same is built. Beginning at the southeast intersection of said streets, running thence east with King street, and the north wall of said warehouse, to the northeast side of the last wall of said warehouse, to the centre of the wall of division of the said warehouse, from the warehouse allotted to William H. Irwin and adjoining it; then west with and through the centre of said division wall to Union street, then north

to the beginning; which said lot of ground is a part of the lot granted to Thomas Irwin, deceased, and John Dunlap, by deed from William Herbert and John C. Herbert, of the 25th June, 1802, and Dunlap's moiety by James Dunlap, by deed of January 20th, 1808, and of Charles J. Catlett, by deed of July 17th, 1813.

Lot No. 6. allotted to Thomas Irwin in severalty.

1st. The lot of ground and warehouse on the east side of Union street, commencing on Union street, at the intersection of said street with a thirty-feet alley, running east, at the distance of seventy-three feet to the south of King street; thence east, with the said alley, to the east side of said wall to the centre of the division wall of the said warehouse allotted to William H. Irwin; then west, with the said centre of said wall, to Union street; then south on said street to the beginning; which said lot is part of the lot of ground granted by William Herbert and John C. Herbert, to Thomas Irwin, deceased, and John Dunlap, by deed of the 25th day of June, 1802, as tenants in common, the moiety of said John Dunlap having been conveyed to said Thomas Irwin, deceased, by James Dunlap, by deed dated the 20th of January, 1808, and by Charles J. Catlett, by deed dated July 17th, 1813.

JAMES IRWIN,
WILLIAM H. IRWIN,
MARY IRWIN,
HANNAH WILSON,
THOMAS IRWIN, Jr.
JOHN E. CAREY,
ANN J. CAREY.

At an United States circuit court of the District of Columbia, continued and held for the county of Alexandria, the 6th day of May, 1835, this deed of partition between the heirs of Thomas Irwin, deceased, was proved by the oaths of John Richards, Orlando Fairfax, and William L. Hodgson, to be the act and deed of James Irwin, Wm. H. Irwin, Mary Irwin, Hannah Wilson, Thomas Irwin, jr., John E. Carey and Thomas Irwin, jr., (trustee) parties hereto, and together with the commission, and the return thereon, for the privy examination of Ann D. Irwin, wife of the said James, and ordered to be recorded.

Teste: EDM. I. LEE, *C. C.*

Rule against William H. Irwin.

At another day, to wit, at a court continued and held for the District and county aforesaid, the 2d day of November, 1844, on motion of the complainants by their counsel, a rule is hereby granted against the defendant, William H. Irwin, returnable to Monday, the 11th day of November, 1844, to shew cause why he shall not be attached for contempt, for refusing to obey, and for violating the injunction awarded in this cause on the 7th day of September, 1844, by the honorable William Cranch, chief judge of the United States circuit court for the District of Columbia.

Rule against William H. Irwin.

And on the same day, on motion of the complainants by their counsel, a rule is hereby granted against the defendant, William H. Irwin, returnable to Monday, the 11th day of November, 1844, that the said Irwin may shew cause on the 11th of November, 1844, why the nuisance, to prevent the erection of which the original bill of injunction in this cause was filed, shall not be abated by a decree of this court.

Answer filed and general commission to take depositions and rules dismissed.

At another day, to wit, at a court continued and held for the District and county aforesaid, the 30th day of November, 1844, came the parties aforesaid, by their counsel, and the defendant in this cause having filed his answer, the parties through their counsel consent that a general commission do now issue to take depositions which shall be closed on or before the first day of the next term of this court, and the cause stand as if regularly set for hearing at that time; and it is further agreed that the affidavits now filed in the cause, shall be read on the hearing thereof, (subject to all legal objections to the matters therein contained, and to the competency of the witnesses,) with the right to the defendant to cross examine, upon notice to the complainants, any of the witnesses whose affidavits have heretofore been taken by complainants and filed in the cause; any of the said affidavits shall be retaken if so required to be done, by defendant's counsel, at least one month before the next term of this court, and any farther depositions in the cause may, upon reasonable notice, be taken by either party before a single justice of the peace. The rules obtained in this cause against the defendant, at this term of the court for contempt, and to abate the obstruction, are to be dismissed without prejudice thereby to any of the rights of complainants as set up, and relief prayed for in the original and amended bills.

In the circuit court of the District of Columbia, for the county of Alexandria, sitting in chancery.

Answer.

The answer of William H. Irwin to the bill of complaint exhibited against him in the circuit court of the District of Columbia, for the county of Alexandria, sitting in equity, by George O. Dixion and John A. Dixion.

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and imperfections in the said bill contained, for answer thereto, or to so much thereof, and to such parts thereof, as he is advised it is material for him to answer unto, answers and says, as to so much of the said original bill, as relates to the acts, or intended acts of this respondent, relative to procuring timber and workmen to erect some obstruction between the warehouse of the complainants and the wharves bounding the Potomac river. That he had, prior to the time of filing

of the said original bill, employed workmen, and procured timber, and intended to erect just such a fence and enclosure as he had erected before the injunction granted by the honorable Judge Cranch was served on him, and before he had any notice thereof; that is to say, he intended to erect, and did erect, an enclosure or fence, starting from a post planted in the ground immediately at the northern side of the window frame of the south window of the lower story of the said warehouse, but covering no portion of the opening of the said window, and not obstructing the access of light to it in any perceptible degree; thence perpendicular to the wall of the said warehouse, and in an easterly direction towards the river, extending about twenty-six feet; thence south about twenty-six feet; thence west about twenty-six feet, to a warehouse held by Thomas Irwin and George S. Gibson, for the sole use and benefit of Ann J. Carey; that the said fence or enclosure does not exceed ten feet in height; and that no part of the structure produces any perceptible diminution of the light passing through any of the windows of the said warehouse, much less so total an obstruction as would entitle the complainants to this summary remedy, were they entitled to said lights.

And he further answers and says responsively to the said bill, that the said fence or enclosure is not erected on, and encloses no part of a public street or strand, or thoroughfare, or highway, or land over which the public generally, or any part thereof in particular, has any right of way. On the contrary, that the said enclosure surrounds, and is built on, a small portion of a certain lot described in the deed of partition between the heirs of the late Thomas Irwin, the father of the respondent, as the "wharf lot," or "wharf property and pier," and situated on the east side of the warehouse allotted to James Irwin, (now held by the complainants,) and of an open space and warehouse on the south adjoining the same allotted to this respondent, and of another warehouse allotted to Ann J. Carey, binding westwardly on the east line of the said warehouses and open space between the same, and thence east into the river Potomac, and designated on the accompanying plot by the letter A, the warehouse assigned to James Irwin being marked B, the open space of William H. Irwin, C, and the warehouse of Ann J. Carey, D, on the same, which plot is prayed to be taken as a part of this answer, and designated as exhibit No. 1; that the said lot, according to the above description, was allotted to the respondent, and his sister Ann J. Carey, and James Irwin, his brother, together with a wharf pier about fifty-three feet broad, and extending at right angles from the eastern side of the said lot, nearly due east into the Potomac river, with all the rights, privileges, and appurtenances to the said wharf property belonging, or in any manner appertaining; as by the deed of partition between the devisees of the late Thomas Irwin, the father of this respondent, bearing date the 15th day of January, 1835, and exhibited by the complainants, will fully appear.

In order that the court may accurately comprehend the full demerits of the claim set up by the complainants, who generously offer themselves as the champions of the public, the respondent is obliged to trace

and illustrate the nature of the title on which reposes the right of the complainants to the warehouse, and of Ann Irwin, James Irwin, and Ann J. Carey, to the wharf lot now respectively in their possession. In the year 1748, a tract of sixty acres, bounded by, and extending along the meanders of the river Potomac, was designated as a site for the present town of Alexandria, and certain trustees were authorized to lay off the said sixty acres into streets and half acre lots, to carry on and maintain the said town, to set apart such portion of the sixty acres for a market place and public landing as they saw fit, and to sell and convey the lots to purchasers; the same act ordering the tract to be surveyed by the county surveyor. By the survey made and duly recorded in the surveyor's book under that statute, (a copy whereof is herewith exhibited, marked F,) it appears that the meanders of the river Potomac at that time intersected the space included between the western and eastern lines of Water street in a slightly curved line, passing through the northern corner of the triangular lot No. 56, of the original plot of the said town, and the northeast corner of *of* lot No. 51, and thence across King street to the line of lot No. 46. The space comprised between the curved line passing through the above points, made by the river on the west, and between two straight lines starting from the extreme northern and southern points above specified, and extending due east into the river Potomac, was covered with water, a part of the said river. That by deed dated 17th September, 1778, a space included within the above lines, and described as a piece of sunken ground, or land covered with water, was conveyed by William Ramsay and John Carlyle, both as trustees of the said town, and as assignees of Philip Alexander, the original proprietor of that portion of the site of the present town of Alexandria, to John Fitzgerald and Valentine Peers, the predecessors of those under whom this defendant acts, who also owned lots No. 51 and 52, by previous purchase, under the trustees of the town. A copy of which deed is herewith exhibited and marked No. 2.

By a deed from said Fitzgerald to William and J. C. Herbert, dated 16th January, 1799, marked exhibit No. 3, and forming a link of the title of the complainants, as well as of this respondent, and those whose agent he is, it appears that the space included between the above lines, and extending into the river as far as the said wharf property now reaches, or nearly so, was converted into dry land by the said Fitzgerald. And this respondent has been informed, and verily believes, that the said space was so converted from water into dry land by the said Fitzgerald, as and for his private property, under the aforesaid deed from the trustees, and that the said conversion took place about the year . That on the solid ground, so made by throwing in stones, earth, sand, and wood, and driving piles, the said Fitzgerald, among other buildings, erected about the year , the main body of the wharehouse, part of which in the partition aforesaid was allotted to this respondent, one of the wings of which was allotted to James Irwin, and now is held by the complainant, the other to Ann J. Carey; that then there was a clear open space extending from the said main

body of the warehouse to the river Potomac, used to pile lumber and merchandise on by its owner, said Fitzgerald; and on this space long afterwards, in the year , the father of this respondent built the wings of the said warehouse, one of which is now held by the complainants, and is designated on the plot by the letter . That after the erection of the said wings, the open space, described as the "wharf property and pier," remained and continued as formerly in the exclusive occupation and ownership of the said Thomas Irwin; that the the said Fitzgerald, from the time of the erection of the docks and wharf, till the sale of the whole of said property to Thomas Irwin, and said Thomas Irwin, purchaser thereof, under a deed of trust from Fitzgerald to William and J. C Herbert, always received and exacted from all vessels lying at the said wharf, or in the said docks, and fastened to the shore, and loading goods from, or unloading goods on, the said wharf property and pier, the customary wharfages for permission granted so to load or unload, and to lie and to be fastened to the shore; and received said wharfages on account of and in virtue of their rights as proprietors of the said wharf lot and pier; that the said proprietors were severally in the constant habit of exercising acts of exclusive dominion, control, and ownership over the whole of the said wharf lot and pier, without regard to the convenience of the public, and directly in conflict with the imaginary right now (much to the surprise of the public,) claimed for its benefit and in its name. They each piled on the said space, and on any part thereof as best suited their convenience, lumber, logs, wood, merchandise of all kinds, from vessels on the river, and without any regard to the supposed and novel rights or claims of the public; the said lumber and merchandise, frequently consisting of flour, tobacco, wood, sugar, molasses, &c., and so encumbering the said space as would not have been tolerated for an instant, had any one claimed the space as it is now claimed by the complainants. And this respondent says, that he has frequently seen his said father drive off and expel from the said wharf lot, carts and drays, and cartmen and draymen, when at all incommoded either by the crowd or their position, or the flies, and disagreeable odors from the horses and the dust, or because the too constant use of the said lot, by the passage of carts and carriages, or the standing of the same thereon, and the stamping of the horses, wore away the made ground of the said lot, and imposed on the said Irwin the expense and trouble of repairing the said lot by filling it up with new earth, stones, and sand, &c., &c.; and he has seen his said father repair and refill, and add earth, and sand, and stones, to the said lot, when and where it was needed, at his own expense, and without the aid or authority of the corporate authority of the said town, from time to time. And that the said draymen and cartmen, and others submitted to be so expelled without contest or resistance, and no objection has been made or intimated, by or on behalf of the public, or individuals, till the present injunction, to the habitual exercise of proprietory rights, exclusive of, and inconsistent with, any such supposed rights on behalf of the public; and that he knows that the passage of drays, carriages, and carts, over the said inclosed lot, was only by the favor of, and

at the will of, the said Thomas Irwin, during his lifetime, and was never permitted to interfere with his arrangements, and was permitted by his implied assent, and accepted and used under and in accordance with it, and not adversely, and as of right by those who did pass and repass; and further, that the acts done and the rights exercised on the same, are claimed, exercised, and acknowledged by all the proprietors of warehouses and wharf lots, between the last range of warehouses and the river, where express private stipulation has not introduced a change; and many having inferior claims, have at various times actually enclosed their spaces, so as entirely to exclude the public from both the right and possibilty of passage, by fences or by piles of merchandise or lumber; and in the last case, when incommoded by the passage of drays or carts, have ordered and compelled them to go round by the regular and public street to reach their destination. That since his father's death, the proprietors of the said lot and wharfs therewith connected and used, have exercised uninterruptedly the same rights and privileges, and acts of ownership over the said lot, either in person or by their tenants, to whom this respondent, as their agent, has for a series of years rented the warehouse now held by the complainants, and, as a separate thing, the wharf lot and the pier, and in that very mode rented the said lot to Howard, the late tenant of the complainant, who at the time of their purchase held the said lot, as well as the said house, under a lease from this respondent, and since the said purchase, up to June in this year, continued to rent the warehouse from them, and the said lot, for the convenience of his business in the said house from this respondent; and the said Howard now holds the wharf pier and the wharf lot in connection therewith, without which the former would be comparatively valueless, under lease from this respondent. He therefore denies peremptorily and positively, that according to the allegations of the complainants' bill the said lot of ground between the warehouse of complainants and the open space and warehouses assigned to this respondent and Ann J. Carey, on the one side, and the river Potomac on the other, either is now, or ever has been, a strand used as a public highway; he denies that it has been so used for thirty years, or for any period long or short; he denies that the said open space owned by the devisees of said Thomas Irwin, called a strand or street in said complainants' bill, is any part of the great thoroughfare for that part of the town of Alexandria, between the Potomac river and the last range of warehouses fronting thereon; and also that it has always, or ever been used, as a common and public highway, for the free and uninterrupted passage and intercourse of the public; he denies that the said open space has ever been dedicated to the public, as an open street and common highway, by all or any of the successive owners in fee simple of the said lot, called the wharf property, and the warehouse adjoining. On the contrary he avers, that each and every of the successive owners thereof, for nearly fifty years, has exercised acts of exclusive ownership, notorious and public, over the said open space, and that the warehouse now occupied by the complainants, was built on what was then a portion of the wharf

lot or property, which, as your respondent is informed, had then been open for more than 20 years, and used as the remainder of said lot has been used to this day; he denies that by such dedication, or under claim or pretence of any such dedication, or by any claim of title adversely to the rights and claims of the owners in fee of the said open wharf property, or in any other manner or mode than by the favor of the successive occupiers of the said lot on which the respondent has erected the aforesaid fence, the right and privilege of passing and repassing has been enjoyed by the public, or any portion of it, as a common highway or public street, for all or for any persons using the same, with their horses, carriages, wagons, drays or carts, of every description, or of any description, either to stand upon, or to pass, or for doing business, or to receive lading, or for other business. He avers that any such right or privilege would be in direct conflict with the known and universally acknowledged rights of the various riparian owners or proprietors of docks and wharves, from one end of the town to the other, to hire out the wharves, and receive wharfage, and in return therefor to grant the right to pile on the said open space goods boxes, hogsheads, lumber, and all kinds of merchandise, either for the purpose of freighting vessels, or when taken from the same, without any regard to the convenience of the public, in derogation of these novel claims; and although such occupation should entirely obstruct and cover the whole open space between the warehouses and the river, subject to one or two local exceptions, resting on private stipulations for rights of way and the like, and that the same privileges extend over the heads of the docks at the ends of King street, Prince street, and other streets of the said town, which are owned and repaired as private property; that when carts and other carriages have gone on the said wharf property for the purpose of receiving lading, and to do business of merchandise, as averred in complainants' bill, it has not been under a claim of right, adverse or in opposition to the owners of said wharf property, but under their permission, incident to their having hired the wharf or dock, for the time being, for the usual wharfage, to vessels to take in or put out their burthens and freights on the said open wharf property or lot, which of course would have been nugatory had not such a contract included both the right of unloading and removing the load; and that for the purpose of doing business, it was and is impossible that carts, or drays, or carriages, can frequent the said wharf lot, except under such a contract as is implied by hiring the wharf and dock to vessels for the aforesaid purpose; for without such hiring and payment of the usual rates of wharfage, no vessel can ever take in loading from, or place frieght on, the said lot, nor can any one exercise, nor has any one exercised, the right of piling merchandise or other obstructions on the said property, besides the said owners thereof, and those to whom the said property and rights have been rented or hired, and for their exclusive benefit. And this respondent avers, that the open space between the warehouses and the river has always been used in connection with, and as a part of the docks and wharf adjoining thereto; that the wharf and docks have been unenclosed as long as this wharf lot, and in the same man-

ner; yet to claim the wharf as public property would be unpardonable insolence. That the said wharf and the said docks, bounding on this lot, have always been used in connection therewith, and were left undivided at the partition aforesaid, because to divide them would have destroyed their value; that the wharf and docks bounding as aforesaid, have always been hired at certain rates to all vessels, either to load from or to unload on, and that such contracts entitled the vessels there lying to use any part of the said pier or lot, on which to place their freight, frequently consisting of wood, flour, tobacco in hogsheads, sugar, and other massive articles; that the wharf would soon be obstructed by such articles, and they have frequently been piled over the space now claimed as a public highway; and that without such a right, and the exclusive privilege of passing and repassing, the head of the dock would be utterly valueless, and the value of the pier much and seriously diminished; since without a place on which to pile the merchandise, and room to pass to and from the same, no vessel could load or unload at the said dock; that in this manner and for these purposes the said Howard has used, and continues to use, the said property, and it is now crowded with piles of wood which was removed from the said pier because there was not room conveniently to hold it, and to sustain the claims of the complainants would be to destroy the value of property originally costing about $20,000, and now worth at least $15,000, as the rent itself would show. He denies that any such place as the great thoroughfare, or public strand, or highway, is known or exists between the last range of warehouses and the Potomac river, further than the same may exist potentially in the imaginations of the complainants, whose rather recent acquisition of property in the larger warehouses on the wharf may perhaps excuse their ignorance of the old and established rights of proprietors of the said property. This respondent admits that the said enclosure partially obstructs the space between the warehouse of the complainants and the river; he is certain that it does not prevent the passage of wagons or carts, between the said enclosure and the river where he and the tenant have voluntarily permitted them to pass, when not inconvenienced by it; he denies that the complainants are aggrieved by the said enclosure; he denies that they have any right to pass out of their warehouse one inch beyond the eastern line of the same, which forms the western boundary of the said wharf lot, or that they have any access to the river, or the wharf of the respondent's principals, extending along the whole eastern front of the lot, unless by their permission, or under particular contracts from them for the use of said lot and wharf, as a necessary part of which the said lot is used; he avers that at the time of the purchase of the said warehouse by the complainants, John Howard, the then occupier, was so fully cognizant of this respondent's rights, that he actually leased, for an annual rent of $625 per annum, the said wharf lot and pier, and since the said sale he continued to rent the said lot, to use with the warehouse owned by the complainants. Nor has this respondent, or those whose agent he is, lain by and permitted the complainants to purchase the warehouse under the supposition that it was entitled to privileges in, or over, or on the

said wharf property, as the complainants insinuate in their said bill, by stating this respondent's presence at said sale without objection. This respondent says, that said sale was not without objection on his part, and in behalf of the other owners of the said wharf lot, on the complainants' understanding of the said sale; that he did not object to the mere sale of the warehouse and the ground on which it stood according to the auctioneer's terms of sale, a copy of which is herewith exhibited, marked No. 4, with a front of feet, and a large door and windows opening on King street; that anticipating from the character of the complainants, a claim, such as is now presented, under the said sale, he distinctly and plainly, during the pendency of the sale and biddings, and in the presence of witnesses, proclaimed that his rights under the sale as purchaser ceased at the line of the wall; that beyond it he had no right or privilege; that up to his very wall the lot was private property, and that the sale was expressly confined to the house and the ground on which it stood, and he now sees that his precaution was not superfluous. He avers that the said notice was given in the hearing of one of the complainants. This respondent is advised, that so far as the complainants' claim to windows opening on the said wharf lot, and to the undiminished admission of light through the same, depends or is aided by the imaginary existence of a public strand, stretching between the said warehouse and the river, it is fully disposed of by the foregoing statement. That as to their claim to windows as ancient lights on the ground of prescription in the eastern end of the said warehouse and looking to the river, this respondent is advised, and therefore charges, that any such claim is not only unfounded in fact, but groundless and impossible in point of law: that complainants' own deed and their own bill, and the deed of partition to which they have referred and exhibited, and the whole line of title deeds under which they claim, shew the warehouse now owned by the complainants, and the large building of which it is a part, and the wharf lot between the whole of the buildings aforesaid, and the river, and the wharf pier, have been, from the deed from the trustees in 1778, down to the partition between the devisees of Thomas Irwin in 1835, always and invariably owned by the same person, claimed by the same title, passed by the same deeds, and equally held and used as their private property; and he begs leave to suggest, that a claim of an easement out of or on one's own property by prescription, and adversely to oneself, is a novelty, of which this respondent has not hitherto been informed; he avers that a claim resting on prescription and use, only derives validity from having been adverse to the owner in fee, and so continued, and for such a length of time as entitles the courts to presume a grant, and that the supposition of such a right held and owned by the owner in fee, over his own land, and adversely, is legally impossible and a contradiction in terms. He avers that the said wharf property and pier were allotted to this respondent and James Irwin, and their sister, Ann J. Carey, by the above deed of partition, and by the same deed the complainants' warehouse was allotted to James Irwin, in severalty; that said wharf property is

held under said partition between the children of Thomas Irwin, and all the rights and privileges of the heirs are now held by the tenants in common, the said deed transferring the said lot, with all the rights, privileges, and appurtenances thereunto belonging, and binding partially on the east line of the said warehouse, and extending thence into the river Potomac; that one of these privileges is held under the corporation of Alexandria, is derived by respondent's principal from their predecessors, Fitzgerald and Peers, is recognised and secured by the custom of the town from its foundation to the present time, and that is, that purchasers of river side lots may build on, or improve under, their bank without molestation from Water street, and that the lots might be extended into the river Potomac as far as the owner might think fit; the entry is on the corporation books, 1st September, 1760, a copy whereof is herewith exhibited, marked No. 5; that by such stipulation the corporate authorities, and the public as represented by them, are estopped from claiming the easement now attempted to be enforced in the face of their own grant, under the guarantee of which the property in dispute was created; that the right of extending wharves into the Potomac river is secured by the compact between Virginia and Maryland, and the space of ground which the complainants claim to use as a highway or strand for public convenience, is simply an open space between the warehouses and the dock, which has been left unenclosed merely for the convenience of access to the wharf which it adjoins, which is strictly private property, and could not have been used so conveniently had this lot been enclosed; and so far have the ancestors of this respondent been from dedicating this space to the public, that they have not enclosed the space because it could be better used as private property if unenclosed, and they have permitted persons to pass over the space when it did not interfere with the private use of the property, and forbidden them when it did so interfere.

In reply to the charge in the bill of complainants, that this respondent had assumed a right to close up the windows and doors of the warehouse, purchased by the complainants, without any authority known to them, this respondent answers and says: that on the 1st of August, 1832, James Irwin, being indebted to Elizabeth Irwin and sundry others, conveyed to Thomas Irwin, of Baltimore, the whole of said James' interest in his father's estate, then held in coparcenary by the heirs of Thomas Irwin, sen'r, among other things, for the purpose of securing the said debts. That on the 20th of April, 1835, the said James made a further conveyance of all his property in the county of Alexandria, including his interest in the vacant lot now in controversy, to William L. Hodgson, to secure sundry debts to this respondent, for which he was responsible on account of the said James, either in his individual capacity, or arising from two partnerships with which he had been connected, and that said trust is still unexecuted and subsisting; and that on account of debts included in said two deeds, a sum fully equal to the interest of James Irwin in the said property is due and unpaid. That about the time of the marriage of this respondent, and immediately before the same, by deed of the day of , 1839,

this respondent conveyed to Peter E. Hoffman, among other property, his undivided interest as tenant of the lot of ground between the warehouses and the river, assigned to James Irwin and William H. Irwin, and Ann J. Carey, their sister, as tenants in common, in trust for the sole and exclusive use and benefit of his present wife ; and thus, prior to his marriage, he settled the said property on his present wife, freeing the same from his liabilities and control. That a similar settlement of the interest of Ann J. Carey, to her own exclusive use and benefit, was made of her undivided interest and estate as tenant as aforesaid, by deed dated the 10th day of August, 1829, and conveying the said property to Thomas Irwin and George S. Gibson, in trust for the purposes aforesaid. That the various persons thus owning the wharf lot and pier, have for a series of years constituted and appointed this respondent their agent and attorney in fact, for the purpose of managing, keeping in repair, improving, renting, and protecting the said property, and that in the exercise of all the authority, which the owners themselves could have exercised over the same, his acts have been ratified and approved ; and in particular, they have authorized the erection of the enclosure, described as a nuisance in the complainants' bill, and fully ratify and approve of all his acts in relation to the same, as also does the said John Howard, as lessee of the said wharf and lot. This respondent farther avers, that the position of the enclosure described in the complainants' bill, the post of which is opposite the side frame of the window alleged to be darkened, does in no material degree, if in any degree, lessen the light heretofore passing through the said window; that the value of the house, for commercial purposes, far from being destroyed, is not materially lessened thereby. That even if the whole of the windows and doors in the eastern end of the house were closed absolutely, the said house is amply provided with windows, and a large door opening on King street, amply sufficient for all purposes, and constituting *that* the real front of the house ; and that those on the east were made by the owner of both pieces of property, in order that the two might be used together more conveniently, but are useless and needless to one who has no right of property in the adjoining lot. That the price given for the property was regulated, and must have been diminished, by the notorious fact of the wharf lot and pier being private property, owned by different persons from the owner of the house, and consequently not to be used with it after a sale ; and that the property is now, without either the right of public passage or the lights claimed by complainants, worth much more than they gave for the property ; and that it is grossly inequitable for the complainants, acknowledging, as one of them does, that he purchased nothing but the warehouse, to seek to add to its value by annexing to it rights of which they would plunder the property of respondent's principals. This respondent avers, that an agreement between the tenants under the said partition, referred to in said deed of partition, so as to make it a part thereof, dated the 15th day of January, 1835, shews an agreement which distinctly involves and admits the right of the owners of the wharf lot to build on the same ; the said agree-

ment forming an essential part of the said partition, since it contains the estimated value of the various lots in accordance with which the contributions by the tenants were to be regulated in case of eviction. He further avers, that the words "fronting the Potomac river," so ostentatiously relied on by the complainants, are not in the deed from James Irwin to John Hooff; they are interlined, in a different hand from the body of the deed in the conveyance from John Hooff to the complainants, as he is informed and believes. And he has been further informed, and thinks he can prove, and believes, that the said deed was placed in Elizabeth Irwin's hands for examination, and retained by her sometime, and was then returned; that *then* the words were interlined, and subsequently the deed was tendered to her for execution, and executed by her without again reading it over; but she stated at the time that she meant to convey nothing but the *house*, and asked more than once, those who took her acknowledgment, if it was all right—and possibly now the court can surmise the object of the interlineation; and that Thomas Irwin and this respondent refused to execute the said deed, because the said words were inserted therein. He further suggests, that the words "fronting the river," used in the deed of partition, were used merely to designate the portion of the block of warehouse intended to be assigned to James Irwin, and not, as contended by complainants, for the purpose of giving the owner a right of front on the river, when the same deed assigned the intermediate part of the property to others of the tenants under the said deed. That the warehouse, purchased by complainants, is only one wing of an immense building, one end of which is bounded on Union street, the other on the wharf lot of respondent's principals, and the above words were used merely to designate which part of the large warehouses, comprising five warehouses, was assigned to James Irwin.

He further avers, that the preference relinquished by this respondent and Thomas Irwin to certain property, in said deed from James Irwin to John Hooff, was nothing more than their prior rights to security under prior deeds of trust, and had no reference whatever to the claims of either of them, or of respondent's wife, to the lot called the wharf lot, nor to their right to build on, hold, or improve the same.

He is advised, and therefore charges, that if any right be obstructed by his enclosure, it is not so far obstructed, so totally excluded, as to entitle the complainants to the interposition of your honors by injunction; that no such irreparable injury can be proved or exists. That the alleged nuisance, if such it be, is a public nuisance, which can be abated by process of the common law, which affords ample remedy for such a grievance; and that for every private injury resulting to the complainants, their remedy is ample and exclusive at the common law. And their insinuation that this respondent has not means sufficient to satisfy any damages they might recover at law, while it is utterly nugatory as a ground of jurisdiction, is further gratuitously impertinent, insolent, and false, and at least should not have been ventured on, unless in a case showing a somewhat more plausible claim to damages

than they can now sustain by proof. He is further advised, that proper parties have not been made; that the suit has been brought against a mere agent; that the actual owners and parties interested in the land in controversy, the wharf lot and pier above described, are not parties defendant to the said bill; and that in their absence an attempt is made to draw in question the title to said property, and to materially affect and injure their rights. This respondent charges, that the owners of said wharf lot and pier, hereinbefore mentioned, are necessary parties to this suit; and he therefore objects to their omission, and prays the same benefit thereof as if the said objection, for want of proper and necessary parties, had been taken by plea or demurrer. This respondent is further advised, that he is not a proper or necessary party to the said suit.

This respondent having thus answered the various allegations of said bill fully and particularly, so far as he is advised it is material and proper for him to answer, prays that the said injunction may be dissolved, if your honors are of opinion there is any in existence, the bill dismissed, and this respondent hence dismissed with his reasonable costs in this behalf sustained.

H. W. DAVIS, *for deft.*

ALEXANDRIA COUNTY, *sct:*

This day personally appeared before the subscriber, a justice of the peace in and for the county of Alexandria, William H. Irwin, respondent in the above answer, and made oath in due form of law, that the facts therein stated, as of his own knowledge are true; and all facts stated on his belief, or the information of others, he believes to be true.

Given under my hand and seal this 4th day of November, 1844.

R. JOHNSTON. [L. S.]

Exhibit No. 1.—Plat.

[This plat cannot be found among the papers.]

Exhibit F.—Survey of the town.

This exhibit is on page , after the deposition of

Exhibit No. 2, referred to in deft's' answer.

Exhibit No. 2.

This indenture, indented and made this 17th day of September, one thousand seven hundred and seventy-eight, witnesseth: that whereas a piece of sunken ground to the eastward of Water street, opposite to lot numbered fifty-one, and adjoining to King street, on the north side, and to lot number fifty-six, on the south, below the bank, and on the east side of Water street aforesaid, unsold and unoccupied, formerly the property of Mr. Philip Alexander, of Stafford county, but condemned by an act of assembly, at the Capitol, in Williamsburg, in the year one thousand seven hundred and forty-eight, the money arising from the said of the lots to be paid to the original proprietors, viz., Philip Alex-

ander, John Alexander, and Hugh West; but the said Philip Alexander being unwilling to abide by the sales of his part of the said lots, agreed with and received from Lawrence Washington, Nathaniel Chapman, William Ramsay, John Carlyle, and John Dalton to give up all his right, title, and interest to his part of the said land, for the sum of two hundred pistoles, which was paid to him by the gentlemen aforesaid, who sold and disposed of the said lots in conjunction with the trustees; they, the said Washington, Ramsay, Chapman, Carlyle, and Dalton, receiving the money for their own use arising from the sale of the said Philip Alexander's part.

Now, as the shore water, and other privileges opposite to the lands of the said Philip Alexander, was invested in him, but, by the sale, devolved on the said Washington, Chapman, Ramsay, Carlyle, and Dalton, the said William Ramsay and John Carlyle being the only surviving partners of the purchase of the said land from Philip Alexander, do, by these presents, as proprietors of the said sunken ground or water, and also as trustees of the said town of Alexandria, for and in consideration of the sum of one hundred pounds, in hand paid by Messrs. John Fitzgerald and Valentine Peers, of Alexandria, merchants, give, grant, alienate, and sell, to the said Fitzgerald and Peers, all their right, title, and interest to the said sunken ground, to the sole use and benefit of them, the said John Fitzgerald and Valentine Peers, and their heirs, and each of their heirs, forever. And the said William Ramsay and John Carlyle do hereby warrant and defend the same to be the property of the said Fitzgerald and Peers, from them and their heirs forever; and do also, in as full and ample a manner as they can, give up all their right and title to the said mentioned sunken ground as purchasers under Philip Alexander as aforesaid.

In witness whereof, they have hereunto put their hands and seals, the day and year before written.

WM. RAMSAY, [SEAL.]
JOHN CARLYLE. [SEAL.]

Sealed and delivered in presence of—
JOSIAH WATSON,
ROBERT ALLISON,
DENNIS RAMSAY.

On the application of Messrs. Fitzgerald and Peers, we, the subscribers, do acknowledge the above deed of conveyance to be as valid and binding on us, and those claiming under us, as if it had been recorded in due time.

Witness our hands, April 15th, 1780. WM. RAMSAY,
JOHN CARLYLE.

We certify the above deed to have been made with our concurrence.
THOMAS FLEMING,
ROBERT ADAM,
JOHN MUIR,
ROBERT McCRAE,
RICHARD CONWAY.
Trustees.

At a court continued and held for the county of Fairfax, the 18th of April, 1780, William Ramsay and John Carlyle, gen., acknowledged this deed to be their acts and deeds, which is ordered to be recorded.

Teste:

P. WAGONER, *C. C.*

A copy.—Teste:

S. M. BALL, *C. C.*

Exhibit No. 3, referred to in answer.—Exhibit No. 3.

This indenture tripartite, made this 16th day of January, in the year of our Lord 1799, between John Fitzgerald and Jane, his wife, of the county of Fairfax, and State of Virginia, of the first part, William Herbert and John C. Herbert, of the town of Alexandria, county and State aforesaid, of the second part, and Robert Townshend Hooe, of the same town, county, and State, of the third part.

Whereas the said Robert Townshend Hooe did, upon the appointment of him, the said John Fitzgerald, to be collector of the port of Alexandria, become security for his, the said John Fitzgerald's, due and faithful discharge of all the duties of the said office, and regular payment of the several sums of money which, as collector, should come into his hands for the use of the United States of America. And whereas, by the regulations established in the Bank of Alexandria, and the other institutions of the same kind within the United States of America, it is required that every person wishing to be accommodated with a loan of money from the bank should draw a note for the sum wanting, payable to some person of responsibility, declaring it to be for the accommodation of the drawer, and to be endorsed by the person to whom made payable; and the said John Fitzgerald proposing, when he shall wish to obtain a loan of money from the Bank of Alexandria, to draw the notes for that purpose payable to the said Robert Townshend Hooe, and procure him to endorse the same, and it may so happen by the death of the said John Fitzgerald, or some other cause, that some note or notes so drawn by the said John Fitzgerald for his particular accommodation, of money from the Bank of Alexandria, and endorsed by the said Robert Townshend Hooe, may not be taken up and discharged by the said John Fitzgerald, his heirs, executors, or administrators, thereby rendered liable and compelled to pay the same; and he, the said John Fitzgerald, *been* desirous of securing and keeping him, the said Robert Townshend Hooe, his heirs, executors, and administrators, fully secured and indemnified from all damages, costs, and charges which he or they might [at] any time be subject or liable to by reason of any misconduct of him, the said John Fitzgerald, in the discharge of the duties of collection of the said port of Alexandria, either by not paying in due time the monies which shall come into his hands for the use of the United States as collector of the said port, or by any other breach of duty in the said office, and from all damages, costs, and charges which he, the said Robert Townshend Hooe, his heirs, executors, and administrators, might, at any time hereafter, be subject to and liable for

on account of any notes drawn by the said John Fitzgerald, for his particular use and accommodation, and endorsed by the said Robert Townshend Hooe, and negotiated at the said Bank of Alexandria.

Now this indenture witnesses, that the said John Fitzgerald and Jane, his wife, as well to secure and keep him, the said Robert Townshend Hooe, his heirs, executors, and administrators, fully indemnified and saved harmless from all damages, costs, and charges, which he or they may at any time hereafter be subject and liable to, for any misconduct or breach of duty of him, the said John Fitzgerald, as collector of the port of Alexandria, and also from all damages, costs, and charges, which he or they might be subject and liable to, in consequence of having endorsed any note or notes so drawn by the said John Fitzgerald, and negotiated at the Bank of Alexandria, for the particular use and accommodation of him, the said John Fitzgerald, as for and in consideration of the trusts and confidences hereinafter contained and expressed on the part and behalf of him, the said William Herbert and his heirs, to be executed, fulfilled, and performed, and of one dollar, to him, the said John Fitzgerald, in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have given, granted, bargained, sold, aliened, and confirmed, and by these presents do give, grant, bargain, sell, alien, and confirm, unto them, the said William Herbert and John C. Herbert, and the survivor of them, and the heirs of such survivor forever, a certain piece or parcel of ground, situate, lying and being upon the east side of Union street, and south side of King street, in the said town of Alexandria, and bounded as followeth, to wit: Beginning at the intersection of said streets, and running thence southwardly with Union street, and binding therewith seventy-three feet, be the same more or less, to an alley thirty feet wide; thence eastwardly, with the line of the said alley, and parallel to King street, one hundred and twenty feet, be the same more or less, to the front of the said Fitzgerald's wharf; thence northwardly, with a line parallel to Union street, the length of the first line to King street; thence with that street, and binding thereto, to the beginning; and the pier formed and constructed by him, the said John Fitzgerald, adjoining to the front of his wharf, and all houses, buildings, landings, places, streets, docks, alleys, profits, commodities, hereditaments and appurtenances whatsoever, to the said premises hereby granted, belonging, or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and every part and parcel thereof. To have and to hold all and singular the premises hereby granted, with the appurtenances, unto them, the said William Herbert and John C. Herbert, and the survivor of them, and the heirs of such survivor forever, in trust to and for the uses and purposes hereinafter mentioned, and to and for no other use or purpose whatever, that is to say, in case he, the said John Fitzgerald, shall neglect any part of his duty as collector of the said port of Alexandria, or commit any act as collector whereby he, the said Robert Townshend Hooe, his heirs, executors, or administrators, may be subject and liable

to damages, and to the advance and payment of money as security for the said John Fitzgerald's due and faithful discharge of the duties of collector; or in case any note or notes so drawn, endorsed, and negotiated, at the said Bank of Alexandria, for the particular use and accommodation of him, the said John Fitzgerald, shall not be taken up and discharged by him, the said John Fitzgerald, when the same shall become payable; that in either case, as soon as any demands shall be made upon him, the said Robert Townshend Hooe, his heirs, executors, or administrators, for the payment of any sum or sums of money which ought to be paid by the said John Fitzgerald, his heirs, executors, or administrators, they, the said William Herbert and John C. Herbert, or the survivor of them, or the heirs of such survivor, do immediately, upon notice given to them, or the survivor of them, or the heirs of such survivor, by the said Robert Townshend Hooe, his heirs, executors, or administrators, of such demand being made, expose all and singular the said premises, or such part thereof, as may be sufficient to satisfy and pay the sum or sums of money so demanded of him, the said Robert Townshend Hooe, his heirs, executors, and administrators, upon account of the said John Fitzgerald; and from time to time, as any such demand shall be made upon him, the said Robert Townshend Hooe, his heirs, executors, or administrators, for the payment of money for the said John Fitzgerald, his heirs, executors, or administrators, upon the aforesaid accounts, or either of them, and notice of such demand given to them, or the survivor of them, or the heirs of such survivor as aforesaid, expose such other parts of the said premises, as may be sufficient to satisfy and pay the sum or sums of money so demanded, to sale at public auction for ready money, they, or the survivor of them, or the heirs of such survivor, upon any sale or sales which may be made by him or them, giving the most public notice of the time and place of such sale or sales which the nature of the case will admit of; and with the monies arising from such sale or sales, in the first place, to satisfy and pay the costs and charges attending upon such sale or sales, and then the sum or sums which may be so demanded of him, the said Robert Townshend Hooe, his heirs, executors, or administrators, either as security for the said John Fitzgerald's due and faithful execution of the office of collector of the said port of Alexandria, or as endorser of any note or notes so drawn by the said John Fitzgerald, and negotiated at the Bank of Alexandria, for the particular accommodation of the said John Fitzgerald; and after paying the costs and charges attending upon the sale or sales which may be made, and the sum or sums of money which may be demanded of the said Robert Townshend Hooe, his heirs, executors, or administrators, as aforesaid, that they, the said William Herbert and John C. Herbert, or the survivor of them, or the heirs of such survivor, do pay the balance of the money arising from such sale or sales, immediately upon closing the account of the said sales and the payment of the monies aforesaid, unto him, the said John Fitzgerald, his executors, administrators, or assigns. And also, upon the further trust, that in case the said John Fitzgerald shall duly keep him, the said Robert Townshend Hooe, his heirs, executors, and ad-

ministrators, indemnified from sustaining any damage as his security for the said John Fitzgerald's faithful execution of the office of collector of the port of Alexandria, and shall duly pay the several notes which shall be so drawn by him, the said John Fitzgerald, endorsed by the said Robert Townshend Hooe, and negotiated at the said Bank of Alexandria, for the particular accommodation of him, the said John Fitzgerald, as the same shall become payable, that they, the said William Herbert and John C. Herbert, or the survivor of them, or the heirs of such survivor, do, upon notice thereof given unto them, or the survivor of them, or the heirs *or* such survivor, by the said Robert Townshend Hooe, his heirs, executors, or administrators, by a deed provided by the said John Fitzgerald, his heirs or assigns, convey all and singular the said premises unto him, the said John Fitzgerald, his heirs and assigns, free from all incumbrance made thereupon by him, the said William Herbert and John C. Herbert, or the survivor of them, or the heirs *or* such survivor; and the said William Herbert and John C. Herbert, do for themselves, and each of them, their and each of their heirs, executors, and administrators, covenant, grant, and agree, to and with the said Robert Townshend Hooe and John Fitzgerald, and each of them, their and each of their heirs, executors, and administrators and assigns, that they, the said William Herbert and John C. Herbert, and their heirs, and the survivor of them, or the heirs *or* such survivor, will well and truly execute, fulfil, and perform the several trusts hereby created and vested in them. And the said John Fitzgerald doth for himself, his heirs, executors, and administrators, covenant, grant, and agree, to and with the said Robert Townshend Hooe, his executors and administrators, and that he, the said John Fitzgerald, will at all times forever hereafter keep him, the said Robert Townshend Hooe, his heirs, executors, and administrators, indemnified and saved harmless from all damages, costs, and charges, on account of his being security for the said John Fitzgerald's faithful discharge of the office of collector of the port of Alexandria, and that he will satisfy and pay each and every note which shall be drawn by him, the said John Fitzgerald, endorsed by the said Robert Townshend Hooe, and negotiated at the bank for the particular accommodation of him, the said John Fitzgerald, as such notes shall severally become payable.

In witness whereof, the said John Fitzgerald and Jane, his wife, and William Herbert and John C. Herbert, have hereunto set their hands and seals, the day and year first before written.

JOHN FITZGERALD, [SEAL.]
JANE FITZGERALD, [SEAL.]
WILLIAM HERBERT, [SEAL.]
JOHN C. HERBERT. [SEAL.]

Sealed and delivered, in presence of—
JOHN MUNCHESTER,
ZACHARIAH MUNCHESTER,
J. KEITH.

At a court of hustings, continued and held for the town of Alexandria, the 1st day of September, 1799.

This deed, from John Fitzgerald and Jane, his wife, to William Herbert and John C. Herbert, was proved to be the act and deed of the parties by the oaths of James Keith, John Munchaster, and Zachariah Munchaster, witnesses thereto, which, together with the commission and return hereunto annexed, for taking the acknowledgment and privy examination of Jane, wife of the said John Fitzgerald, and ordered to be recorded.

Teste: G. DENEALE, *C. C.*

ALEXANDRIA CORPORATION, *sct:*

The Commonwealth of Virginia, to Francis Peyton, Jonah Thompson, Amos Alexander, John Dundas, George Taylor, and Alexander Smith, esquires, gentlemen, justices of the corporation, greeting:

Whereas, John Fitzgerald and Jane, his wife, by their certain indenture of trust, bearing date the 16th January, 1799, have sold and conveyed unto William Herbert and John, his son, in trust, for themselves and Robert I. Hooe, the fee simple of a piece of ground, with the appurtenances, situate, lying, and being upon the east side of Union street and south side of King, in the town of Alexandria aforesaid; and whereas, the said Jane cannot conveniently travel to our said court to make acknowledgment of the said conveyance—therefore, we do give unto you, or any two or more of you, power to receive the acknowledgment of the said conveyance which the said Jane shall be willing to make before you of the conveyance aforesaid, contained in the said indenture, which is hereunto annexed; and we therefore desire you, or any two or more of you, personally to go to the said Jane and receive her acknowledgment of the same, and examine her privily and apart from the said John Fitzgerald, her husband, whether she doth the same freely and voluntarily, without his persuasion or threats, and whether she be willing that the same, together with this writ, shall be recorded in our said court; and when you have received her acknowledgment, and examined her as aforesaid, that you distinctly and openly certify us thereof in our said court, under your hands and seals, sending then there the said indenture and this writ.

Witness George Deneale, clerk of our said court, September 3d, 1799.

G. DENEALE, *Clerk.*

FAIRFAX COUNTY, VA., *town of Alexandria, sct:*

In obedience to the within commission, we, the subscribers, magistrates of the town and corporation of Alexandria, did see and examine the within mentioned Jane Fitzgerald, wife of John Fitzgerald, separate and apart from her husband, and she did declare and say, and acknowledge before us, that the deed she had on her part executed for the lot of land within mentioned, was executed with her free will and consent, and without threats from her husband, and without fear of his displeasure; and that she was perfectly willing that said deed, and this, the within

instrument of writing, passing away her right of dower, should go to record.

Witness our hands and seals, this 3d day of September, 1799.

AMOS ALEXANDER, [SEAL.]
ALEXANDER SMITH. [SEAL.]

Teste: G. DENEALE, *C. C.*

No. 4.

Auctioneer's terms of sale referred to in the foregoing answer, (this paper is missing).

Exhibit No. 5 referred to in answer.

No. 5.

On examining the records of the town we find an *omition* in not entering what was agreed on before the day of sale of any of the said lotts. That is, that every purchaser of river side lotts, by the terms of the sale, was to have the benefit of extending the said lotts into the river as far as they shall think proper, without any obstruction from the street called Water street. It appears to us, who were not trustees at the time of the sale of said lotts, by the proofs of those that were present, also by Mr. John West, jun'r, the clerk at the same time, that those who did purchase lotts on the river side should be intituled to the said privileges, that is, that each owner of river side lotts might build on or improve under his bank as he should think proper without any molestation from the street called Water street intersecting. We have therefore caused this entry to be made in the town book to serve such purchasers to water lotts, as were originally intended, and to prevent disputes for the future.

Given under our hands.

WM. RAMSAY,
JOHN CARLYLE,
GARR'D ALEXANDER,
JOHN DALTON,
G. JOHNSTON,
JOHN HUNTER,
ROBERT ADAM.

Answer filed, gen'l replication and set for hearing.

At another day, to wit, at the rules held in the clerk's office of the court aforesaid, for the month of April, 1845, (until which time this cause had been regularly continued,) came the parties aforesaid, by their solicitors aforesaid, and the defendant filed his answer, to which the complainants reply generally, and cause set for hearing under agreement made at October term, 1844. (Answer on page 53.)

And at another day, to wit, at a court continued and held for the district and county aforesaid, the 10th day of June, 1845, came the parties aforesaid, by their solicitors aforesaid, and this cause is continued.

Commissions awarded to take depositions, and to stand for hearing peremptorily at next term.

And at another day, to wit, at a court continued and held for the district and county aforesaid, the 17th day of October, 1845, came the parties aforesaid, by their solicitors aforesaid, and it is ordered by the court, that the parties in this suit have further leave to take depositions till the first day of the next term of this court, upon ten days previous notice, and that commissions for that purpose be awarded by the clerk, and that said cause stand for hearing peremptorily at said May term of this court, and that the cause be continued until said time.

And at another day, to wit, at a court continued and held for the district and county aforesaid, the 20th day of May, 1846, came the parties aforesaid, by their solicitors aforesaid, and this cause is continued.

Motion for an issue.

And at another day, to wit, at a court continued and held for the district and county aforesaid, the 31st day of October, 1846, came the parties aforesaid, by their solicitors aforesaid, and thereupon the defendant moved the court to award an issue to be sent for trial to the circuit court of the District of Columbia, on the common law side thereof, to ascertain whether the space of ground lying between the east end of the complainants' warehouse in the bill mentioned and the Potomac river, or any part thereof, had ever been dedicated by any fee simple owner thereof as a highway, to the use of the public, or whether any and what part thereof had been so dedicated; and if any part thereof had been so dedicated, when the same was so dedicated.

Motion overruled.

But the said court overruled the said motion, and refused to award the said issue as prayed, or any issue relating to the dedication of the said space, or any part thereof. To which said refusal the defendant excepted and objected.

Decree.

And the cause now coming on to be heard on the original and amended bills of said complainants, the answer of the defendant, and the exhibits and proofs taken and filed therein by the said parties, respectively, and the court having read, heard, and considered the same, and having heard the arguments of counsel, and being fully satisfied that Thomas Irwin, the ancestor of said defendant, did, in his lifetime, dedicate to the public use a highway passing along the eastern front of the said warehouse mentioned in said complainants' bill, and running from King street to Dock street, or Fitzgerald's alley, in the town of Alexandria, and that the same was used as a highway for many years before the filing of the said bill; that there was next to the said warehouse, and within the said highway, a footway about four feet wide, beyond and next to which was a highway for the passing and repassing of carts, carriages, drays, and horses, and the same was commonly used by all

persons having occasion to use the same. And being further fully satisfied that the said defendant did, before the filing of the said bill, erect across the said highway a fence, which he hath continued to this day, fully obstructing the passage along the said highway; that the said fence is immediately adjacent to the east wall of the said house, between two of the windows in the said east wall, and close to the frame of one of said windows; that the said fence was a special and material injury to the use and enjoyment of the said *defendants'* said warehouse, and is a continuing injury to the same, do, this 31st day of October, 1846, adjudge, order, and decree, that the injunction heretofore issued in this cause, be and the same is hereby made perpetual. And they do further order and direct, that the said defendant do forthwith take down and remove the said fence, and that he be, and he is hereby forever hereafter, so long as the said footpath and highway shall be continued to be used as such, enjoined and prohibited from erecting or putting any obstruction in the said highway within the space of nineteen feet wide, measured east from the eastern wall of said warehouse of said complainants, and running from King street to Dock street, or Fitzgerald's alley, as it is indifferently called and known; which said nineteen feet is hereby declared to be the eastern limit of said highway, and said highway does extend no further east; and that the said defendant pay the costs of this suit, to be taxed by the clerk.

From which decree the defendant prays an appeal to the Supreme Court of the United States, which is granted by the court upon his giving bond and security in the sum of five hundred dollars, to be approved by the court or one of the judges thereof.

Complainants' costs $

At the hearing of this cause the complainants read in evidence to the court such portions of the testimony in the following depositions contained as are specified in the following statement, marked A, and by their counsel signed.

And the defendant read in evidence on his behalf such portions of the testimony in the following depositions contained, as are specified in the following statement, marked B, and by his counsel signed.

And the said complainants further read in evidence the exhibits filed with their bill, and such others as are hereinafter contained, under the head of complainants' exhibits. And the defendant further read in evidence the exhibits filed with his answer, and those hereinafter set forth under the head of defendant's exhibits.

A.—Complainants' list of evidence.

A.

The complainants offer to read, and read in evidence, subject to the opinion of the court upon the several papers and depositions, and appearing thereon, respectively, the exhibits filed with their original and amended bills respectively, and all the depositions of the several witnesses examined on the part of the complainants, and also the depositions in-

cluding the cross examinations of John Douglass and Charles J. Catlett, witnesses produced and examined on the part of the defendant; and also claim to read, and do read, in reply to the several depositions of witnesses produced and read by the defendant, the cross examinations of the said witnesses respectively, so far as they are admissible, and subject to the opinion of the court on the several exceptions thereto appearing therein respectively. And they waive all, and each, and every exception taken and noted by them before the said commissioners respectively, at the time of taking the several depositions in this cause on behalf of the complainants and on behalf of the defendant respectively.

SMITH & BRADLEY,
For complainants.

B.—Defendant's list of evidence.

B.

Defendant puts in the examination in chief of Reuben Johnston, John Howard, Joseph Nevitt, Joseph Harris, William Yeaton, Edward Sheehy, John H. Janney, James Irwin, Maskell C. Ewing, R. I. T. Wilson, and John H. Janney. Defendant excepts to the following questions put by complainants to the following witnesses. Defendant excepts to the 3, 4, 6, 7, 9 interrogatories, put to Mr. Gregory, as leading. To the 3, 5, 6 questions put to James D. Kerr, as leading. To the 2, 3, 4, 6, 7, 8 questions put to James D. Kerr. To the 3d interrogatory and answer in James A. Stewart's deposition. And he further insists on, and urges at the hearing of this suit, the several exceptions, and each and every of them, noted before the commissioners to the testimony, and to the parts of the testimony, and the interrogatories taken or put on behalf of the complainants, whether in chief or on their cross examination, and claim the benefit of each and every of the said exceptions appearing on the return of the commissioners respectively.

H. W. DAVIS, *for Defendant.*

The taking of the following depositions was commenced this eleventh day of April, 1845, between sunrise and sunset of said day, at the office of Charles McKnight, in the town of Alexandria, D. C., to be read as evidence on behalf [of] the complainants, in a suit now pending and undetermined on the chancery side of the U. S. circuit court of the District of Columbia, for the county of Alexandria, in which George O. Dixion and John A. Dixion are complainants, and William H. Irwin is defendant; said depositions were taken under the enclosed notice and commissions.

Mr. WILLIAM H. IRWIN,

SIR: You are hereby notified, that Friday, the 11th day of April, 1845, at the office of Charles McKnight, in the town of Alexandria, D. C., between the hours of sunrise and sunset of said day, we shall proceed to take the depositions of John Ball, Thomas Sanford, Benoni Wheat, William Gregory, Stephen Shinn, Robert Jamison, Joseph H.

Miller, Daniel Minor, M. C. Ewing, Andrew J. Fleming, John Jamison, John Cohagan, Leonard Marbury, James Stuart, and others, to be read as evidence in our behalf at the hearing of a suit now pending and undetermined on the chancery side of the circuit court of the District of Columbia, for the county of Alexandria, in which we are complainants and you are defendant; and should the taking of said depositions not be completed on the day above mentioned, the same will be continued from time to time, to such times and places as the justices before whom they are taken shall at each continuance appoint and designate, until the taking of said depositions shall be completed.

April 3d, 1845. Yours, &c.,

GEORGE O. DIXION,
JOHN A. DIXION.

ALEXANDRIA COUNTY, *sct:*

Henry Criss personally appeared before the subscriber, a justice of the peace in and for the county aforesaid, in the District of Columbia, and made oath in due form of law, that on this day he delivered a true copy of the within notice to William H. Irwin.

Given under my hand this 5th day of April, 1845.

JOS. EACHES, *J. P.*

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Charles McKnight, Joseph Eaches, Reuben Johnston, and Bernard Hooe, justices of the peace for Alexandria county, or any two of you, gentlemen, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection, in diligently examining John Ball, Thomas Sanford, Benoni Wheat, William Gregory, Stephen Shinn, Robert Jamieson, Joseph H. Miller, in behalf of George O. Dixion and John A. Dixion, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, between George O. Dixion and John A. Dixion, complainants, and William H. Irwin, defendant; we therefore desire you, that at such time and place as you shall appoint, you assemble yourselves together, and the witnesses aforesaid, before you, or any two or more of you, that you call and cause to come, and diligently examine on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined them and taken their depositions as aforesaid, that you return the same to our said court, certified under your hands and seals, enclosed together with this writ.

Witness William Cranch, esquire, chief judge of our said court, this 11th day of April, in the year of our Lord 1845.

CASSIUS F. LEE, *C. C.*

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Charles McKnight, Joseph Eaches, Reuben Johnston, and Bernard Hooe, justices of the peace for Alexandria county, or any two of you, gentlemen, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection, in diligently examining Daniel Minor, M. C. Ewing, John Jamieson, John Cohagan, Leonard Marbury, James Stewart and als., in behalf of George O. and John A. Dixion, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, between George O. and John A. Dixion, complainants, and William H. Irwin, defendant; we therefore desire you, that at such time and place as you shall appoint, you assemble yourselves together, and the witnesses aforesaid, before you, or any two or more of you, that you call and cause to come, and diligently examine on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined them and taken their depositions as aforesaid, that you return the same to our said court, certified under your hands and seals, enclosed together with this writ.

Witness William Cranch, esquire, chief judge of our said court, this 11th day of April, in the year of our Lord 1845.

CASSIUS F. LEE, *C. C.*

Deposition of William Gregory.

William Gregory, a witness of full age, introduced by the complainants, being first duly cautioned and sworn, deposes and says:

Question by complainant's counsel.

1. How long have you resided in the town of Alexandria?

Answer. Since the 6th of October, 1807.

2. Question by same. Are you acquainted with the warehouse property now owned by George O. Dixion and John A. Dixion, at the foot of King street, in said town?

Answer. I am.

3. Question by same. Examine the plat now shown to you, and on which you will please write your name, for the purpose of identifying it, and say whether said plat exhibits a correct view of the said warehouse property, and the relative location to the adjacent property, the Potomac strand, the wharf, and the Potomac river?

Answer. So far as I can determine by my eye, the plat herewith exhibited, marked A, presents a correct view of the points indicated in question 3, and their relative position.

4. Question by the same. Is there any fence, enclosure, shantee, or other obstruction, or impediment to the eastern front of said warehouse, and adjoining it, and between said eastern front and the Potomac river? If so, state the nature of such obstruction; when, and by whom, the same was erected; and whether the description of it as laid down on said plat is correct.

Answer. There is now an obstruction and impediment to the eastern front of the warehouse here mentioned, and adjoining it, and between said eastern front and the Potomac river. The obstruction, as now standing, is shewn by the dark lines surrounding the word "shantee," and extending north to the warehouse of George O. and John A. Dixion. When my affidavit was heretofore given there was an obstruction

covering all the ground included between the dark line to the north of the word "shantee," and the red dotted lines indicated on the east by the words "board fence," and by the red dotted line on the south, extending to the lot of Ann J. Carey. The obstruction consists of the shantee and fence, which is made of strong pine boards or plank, and about seven or eight feet high; it was erected some time in the last fall; but by whom I do not personally know.

5. Question by same. In what manner has the ground to the east of said warehouse, and between said front and the Potomac river, now covered by said obstruction, been used since your acquaintance with said property?

Answer. As a public thoroughfare and highway.

6. Question by same. Have persons been in the constant habit of passing free and unrestrained over the foot pavement immediately to the eastern front of, and adjoining said warehouse; and have the public been in the habit of using the ground to the east adjoining by passing over the same with horses, carts, drays, and wagons at all times, when desired?

Answer. I believe so. I have seen drays, carts, &c., passing there an hundred times, and have never before seen any permanent obstruction on the said grounds.

7. Question by the same. Is the said fence and shantee a public inconvenience; does it narrow the ground heretofore used as a public highway? And state whether or not it is an injury, light or serious, to the warehouse property of said Dixions.

Answer. The fence and shantee above described do narrow the space heretofore used as a public highway; and are therefore, I should think, a public inconvenience. I should regard them as a serious injury to the warehouse property of the Messrs. Dixion.

8. Question by same. Where did Thomas Irwin, deceased, reside at the time of his death, and for many years previous; and where have his children resided since his death?

Answer. Thomas Irwin lived and died in Alexandria, where the larger number of his children have resided, and still do reside; two of them, I believe, live in the city of Baltimore, in the State of Maryland.

9. Question by same. Did you ever know the said Thomas Irwin, his children, or any person having claim to the property to the east of the eastern front of said Dixion's warehouse, and between it and the Potomac river, to forbid or attempt to restrain the public in the use of the ground now covered by the obstruction, as the same is laid down on said plat marked A?

Answer. I never did.

Question by defendant's counsel. In your answer to the 5th question of complainants, you say that the ground in question has been used as a public highway and thoroughfare, state whether it has been so used as a right claimed adversely to Thomas Irwin and his children, or by his and their consent and permission, and at his and their pleasure.

Answer. I know nothing about that.

1280.

Further this deponent saith not.

WILLIAM GREGORY.

Deposition of James M. Stewart.

James M. Stewart, a witness of lawful age, being first duly sworn, deposeth and saith:

1. Question by complainant's counsel. How long have you resided in the town of Alexandria?

Answer. I was born in Alexandria in October, 1781, and have continued to reside here ever since.

2. Question by the same. Are you acquainted with the warehouse property owned by George O. and John A. Dixion, at the foot of King street, in said town? If so, examine the plat herewith submitted to you, on which you will please write your name in order to identify it, and say whether or not it presents a correct view of said warehouse and the adjoining property.

Answer. I am acquainted with the property as described in the above interrogatory. The plat marked A, on which my name is written, does present a correct view of the said warehouse and the adjoining property.

3. Question by same. The foregoing questions, numbered 4, 5, 6, 7, 8, 9, as propounded to William Gregory, are now read and repeated to you, and you will please state what you know in reply thereto.

Answer. I have been present during the examination of William Gregory, a witness in this cause for complainants, and have heard his answers to the interrogatories Nos. 4, 5, 6, 7, 8, 9; my answers entirely agree with those given by Mr. Gregory in every particular. The property now covered by the shantee, fence, and obstruction, as laid down on the plat, has been used as a public highway for more than forty years; during all which time I have never known any impediment, of a permanent character, to be erected or permitted on the said grounds, before the present obstruction, which was put up some time in the course of the last autumn.

In answer to defendant's question, witness says. I cannot answer; I know nothing about that. And further he saith not.

JAMES M. STEWART.

Deposition of James D. Kerr.

James D. Kerr, a witness of lawful age, being first duly sworn.

1. Question by complainants' counsel. How long have you resided in the town of Alexandria?

Answer. For fifty years.

2. Question by same. Are you acquainted with the warehouse property owned by George O. and John A. Dixion, at the foot of King street, in said town; if so, examine the plat marked A now shewn to you, and on which you will please write your name to identify it, and say whether or not said plat presents a correct view of said warehouse and adjoining property?

Answer. I have examined the plat marked A. It does present a

correct view of the warehouse referred to and of the adjoining property.

3. Question by the same. Is there any fence, shantee, or other obstruction to the east of said warehouse, and between and adjoining its eastern front, and the river Potomac; and if so describe it, and say whether a correct view of it is laid down on said plat?

Answer. The description of the obstruction given by Mr. Gregory in his deposition, which I have carefully read and examined, is correct; as are also the location and view thereof, as shewn by plat marked A now before me.

4. Question by same. In what manner has the ground between the eastern front of said warehouse and the Potomac river been used since you have known the same, and have you ever known any permanent obstruction thereon before that alluded to in your foregoing answer?

Answer. The ground above referred to has been used as a public street and common highway for at least thirty-five years, that I recollect it distinctly. I have never, until now, known any obstruction of a permanent nature on said grounds or the adjoining property.

5. Question by same. Is there a foot pavement to the east of, and adjoining the wall of said warehouse, and between said wall and the Potomac river; by whom was the said pavement made, and how has it and the ground east of it been used within your recollection?

Answer. There is a foot pavement, such as is described in the above interrogatory, and it has been used for many years past, together with the adjoining grounds, by foot passengers, and the owners and drivers of carts, drays, wagons, &c., in their regular business pursuits, in passing to and fro on the said wharf. I do not know by whom the said pavement was made.

6. Question by the same. Is the obstruction referred to in the foregoing questions and answers injurious or otherwise to the said warehouse property; if injurious, to what extent; and is it or not a public inconvenience?

Answer. The obstruction here referred to is certainly injurious to the said warehouse property, as it cannot fail to be, so long as it shall continue, but to what extent I cannot say. It cannot but be regarded as a public inconvenience.

7. Question by same. You will please state what you know in relation to the 9th interrogatory, which is propounded in the foregoing depositions to William Gregory, and which is now read to you.

Answer. I never did know Thomas Irwin or any of his children, or any person having claim to the property described in the said interrogatory, to interfere with the use thereof by the public, or by any individual, as a common highway, until the present prohibition by the defendant in this suit.

By defendant's counsel. The question asked of William Gregory is here repeated, and the witness answering, says he does not know.

2. Question by defendant's counsel. Have you ever seen wood, or merchandise, or goods piled on any portion of the wharf lot between

the warehouse and the river; if so, state how far, and when. Do not the owners of the wharf property exact wharfage from all vessels, in return for the privilege of taking in freight from, and putting it out on, said wharf and wharf lot and docks adjacent?

Answer. I have seen wood, merchandise, &c., piled on a part of the wharf, but to what extent I cannot undertake to say. I believe the custom is for the owners of wharf property to exact wharfage from vessels in return for the privilege of taking in freight from, and putting it out on, their wharves, and wharf lots, and docks adjacent. I have paid wharfage to Thomas Irwin.

Further this deponent saith not. JAMES D. KERR.

Leonard Marbury's deposition.

Leonard Marbury, introduced as a witness for the complainants, of full age, being first cautioned and sworn, deposes and says:

1. Question by complainants' counsel. Do you reside in the town of Alexandria; if yes, how long, and what is your employment?

Answer. I reside in Alexandria, where I have lived since 1816, and had at intervals resided here since 1804; am and have been in seafaring business, and am a sea captain.

2. Question by same. Are you acquainted with the warehouse property owned by George O. and John A. Dixion, at the foot of King street, in said town; if yes, examine the plat now shewn to you, marked A, and on which you will please write your name for the purpose of identifying it, and state whether it presents a correct view of said property, and of the grounds, buildings, and rivers adjacent.

Answer. I am acquainted with the property, warehouse, &c., at the foot of King street, now occupied by Messrs. Dixion. I have now examined the plat marked A; it does present a correct view of said property, and of the ground, buildings, and river adjacent.

3. Question by same. Is there any fence, building, or other obstruction, adjoining the eastern front of said warehouse, and between said front and the Potomac river; if so, state the nature and description of said obstruction, when and by whom the same was erected, and whether or not a correct drawing thereof is laid down on said plat.

Answer. There is an obstruction adjoining the eastern front of the warehouse spoken of, and between the said front and the Potomac river; the obstruction consisted at first of a fence running as is shewn by the dotted lines which form three sides of a square, one of which rests on the lot occupied by George O. and John A. Dixion, and the other on the lot marked on the plat as belonging to Ann J. Carey; all the obstruction has been since removed, except that part which is represented by "shantee," which still remains, and the northern line running to the eastern front of the said warehouse.

Defendant's counsel here excepts to so much of the foregoing answer as refers to the shantee.

4. Question by complainants' counsel. Does the said enclosure or shantee interfere with either of the lower windows in said Dixion's warehouse, or exclude the light therefrom?

Answer. Yes.

5. Question by same. In what manner has the ground been used within the period you have known said property, which is now covered by said fence and shantee?

Answer. It has been used as a public thoroughfare, unobstructed since I have known the town. I have never known any obstruction there, until that which is now there was put up.

6. Question by the same. Have the public freely, and at all times, when desired, passed over said property with horses, carts, drays, wagons, &c., without restraint from any person within your knowledge? (Excepted to by defendant's counsel.)

Answer. I know of nothing to the contrary, as far as my knowledge goes.

7. Question by same. Is the said fence and shantee injurious or otherwise to the warehouse property of said Dixions; and is it or not inconvenient and injurious to the public?

Answer. It is decidedly injurious to the warehouse property of the Messrs. Dixion; and it is more inconvenient to the public than it was before the said obstructions were put there.

8. Question by the same. Do you know whether any person whatsoever ever attempted to restrain the public in the use of the ground as a public highway now covered by said obstruction, before the present?

Answer. Never.

1. Question by defendant's counsel. Do you mean in your reply to 4th interrogatory that the fence obstructs the view from the window, or that it excludes the light from entering the window?

Answer. I mean to say that it interferes with the window of the warehouse in this way, by preventing access to the window on the outside, except by passing around the shantee.

2. You do not then mean to say that the fence excludes the light from entering the window?

Answer. I do not recollect the height of the fence, and do not know that it does exclude the light from the window.

This 2d interrogatory excepted to by complainants' counsel.

3. Can you state whether or no the owners of wharf property in Alexandria do, or do not, exact wharfage from vessels for the privilege of lying at the wharf or in the docks, and taking in freight from, and putting out freight on, the docks and wharves?

(Excepted to by complainants' counsel.)

Answer. All the knowledge I have on that subject is that derived from my own experience in my connexion with the shipping business of this port. I know nothing about any general custom on the subject. I have always paid dockage for my ship; that is, for the privilege of lying in the dock. I know nothing about the wharfage, which is a charge incident to goods.

4. State where the space known as Potomac strand lies, and what are its northern limits.

Answer. I have always considered the Potomac strand to extend from the tobacco warehouse, on the south side of Duke street, to Swann's plaister mill on Wilkes' street.

5. The words "Potomac strand" appear on the part you have been shewn, covering the lot in front of Dixion's warehouse. Does that lot, to your knowledge, form any part of said strand? Has any portion of Potomac strand as above described by you been enclosed; if so, when, and by whom, and what is its condition now? (Excepted to by complainants.)

Answer. Dixion's lot does not to my knowledge form any part of the "Potomac strand." A part of what I consider the Potomac strand has been enclosed by Hugh Smith at his foundry between Wolfe and Wilkes' streets, in Alexandria. That enclosure was made at least seven or eight years ago; when I was engaged in building the ship "General Washington," my attention was first called to the subject.

6. Does the fence obstruct the passage of carts, &c., in front of the warehouse; if not, how much space is left between said fence and the dock?

Answer. It obstructs the passage of carts and of foot passengers exactly to the extent of the fence and shantee in front of the warehouse, neither more nor less.

7. Is there space enough between the fence and the dock to permit carts and drays to pass?

Answer. Yes, there is.

Question by complainants' counsel. Does the fence or shantee above spoken of intercept the view, or in any manner exclude the light from either of the windows of said warehouse? (Excepted to by defendant's counsel, so far as it relates to the shantee.)

Answer. Yes, the shantee obstructs the view; as to the light, I do not know.

Question by same. What are the east and west boundaries of the Potomac strand?

Answer. I do not know.

Further this deponent saith not.

LEONARD MARBURY.

Deposition of Stephen Shinn.

Stephen Shinn, of lawful age, a witness introduced by the complainants, being first sworn, deposes and says:

1. Question by complainants' counsel. How long have you resided in the town of Alexandria; are you acquainted with the warehouse property owned by Messrs. George O. and John A. Dixion, at the foot of King street; if yes, examine the plat now shewn to you, and on which your name is written for the purpose of identifying it, and say whether or not it presents a correct view of said warehouse, the adjoining property, and the river Potomac.

Answer. I have resided in Alexandria for thirty years. I am acquainted with the property referred to in the foregoing interrogatory, and say it is correctly represented on the plat before me.

2. Question by the same. Has any fence, enclosure, shantee, or other obstruction been erected between and adjoining the eastern front of said warehouse and the Potomac river? If so, state when the same was erected, of what it is made, and whether or not the drawing of it as laid down in said plat is correct.

(Excepted to by defendant's counsel as far as relates to the shantee.)

Answer. A fence or pen has been erected adjoining the eastern front of the wareh use referred to, and between it and the river; it was put up in the past year, but in what month I cannot say; it is made of pine boards, secured, I believe, to cedar posts; is about seven or eight feet high; the drawing of it is, I think, laid down correctly on the plat before me. Within the fence or pen above mentioned is a shantee, so constructed that its front forms a part of the fence or enclosure.

3. Question by same. Have you ever before given an affidavit in this suit? If yes, state whether the said obstruction has been altered, and in what respect in its shape and size, since said affidavit was given.

(Excepted to by defendant's counsel.)

Answer. I have given an affidavit in this suit before; all the south side has been taken away since my affidavit was given, and I am not positive whether there has been any part of the eastern front removed, but am under the impression that it has been.

4. Question by same. Did the said obstruction, when it was first erected, or does the same since the alteration alluded to in the foregoing answer, interfere with either of the lower windows of said warehouse, by intercepting the view from said window, excluding the light which would otherwise enter said warehouse, or by preventing the shutter of said window or windows from closing?

(Excepted to as far as the alteration is spoken of.)

Answer. When first erected the obstruction above mentioned prevented the Messrs. Dixion from having access to the outside of the south window of their warehouse in the front at all; since the alteration has been made, free access to the window is still obstructed from the outside, as the window can only be approached by passing around the shantee; to a certain extent those obstructions do exclude the light.

5. Question by same. Does the western end of the shantee cover said window, or has it done so at any time since the original obstruction was erected?

(Excepted by defendant's counsel.)

Answer. It has done so, but does not now.

6. Question by same. In what manner has the ground now covered by said obstruction since your residence in Alexandria been used, and by whom?

Answer. Since my recollection the ground spoken of has been an open space, until this obstruction was put upon it last year; it has been used by the public without restriction as far as my knowledge extends.

7. Question by same. Has the said space been used during the period alluded to as a public highway for the passage of any and all persons whatsoever so desiring; and have you ever known any person or persons restricted in a free passage over said space?

(Excepted to as a leading question.)

Answer. I have never known any permanent obstruction on the said space since I have known the premises, until that which was erected in the course of the past year.

8. Question by same. In what business are you engaged, and where is your place of business, and where has been your place or places of business since your residence in Alexandria?

Answer. I have been engaged in the grocery and commission business since December, 1823, in the immediate vicinity of the property, now the subject of this controversy. My present location is shewn on the plat by the word "*Shinn's*," and I have occupied part of the property contiguous since February, 1828.

At this point of the evidence the farther proceeding in taking these depositions was suspended, and at six o'clock in the afternoon of this day (Friday, the 11th day of April, 1845,) the farther execution of the commission hereto attached was adjourned until Thursday next, the 17th April, 1845, at 10 o'clock in the morning, to the office of Chas. McKnight, in the town of Alexandria.

CHARLES McKNIGHT,
B. HOOE.

The farther taking of depositions in this cause (George O. Dixion, and Jno. A. Dixion, complainants, against William H. Irwin, defendant,) was resumed this 17th day of April, 1845, at the office of Charles McKnight, in the town of Alexandria, pursuant to adjournment on Friday, the 11th day of the said month.

Cross examination of Stephen Shinn commenced.

1. In reference to your answer to the 4th interrogatory, state whether or no the window therein referred to was rendered absolutely useless for the purpose of admitting light, or to what extent was it rendered less capable of admitting light, and how much light was excluded from entering said window by the said fence in its original condition without reference to any subsequent alterations.

Answer. The fence, as originally erected, enclosed the window entirely, and as there were shutters to the window which could not be approached on account of the obstruction occasioned by the fence, and could not therefore be opened, I consider the said fence as being the means of excluding the light from the window altogether.

2. Which excludes the light from entering the window, the fence itself or the shutters; that is, suppose there were no shutters to the window, would the fence obstruct the light, and exclude it in any, and if any, to what extent?

Answer. If there were no shutters to the said window the fence would exclude the light to a limited extent, but how far I cannot undertake to say.

3. You say above that the fence enclosed the window, and therefore it could not be opened. Have you, or have you not, examined the said window; and whether or no does the said fence, or any part thereof, actually prevent the shutters of said window from being opened; does it touch or press against any portion of the shutters; and can or cannot the Dixions open the window from the inside? How do they open their upstairs windows?

Answer. I do not know how the Messrs. Dixion open their windows, nor how they approach them from the inside; further than this, I can not positively answer this question; for I have not examined, and do not know, whether the fence presses against the shutters or not.

4. Whether or no did the fence, as originally constructed, leave any and what space between it and the river; and can or cannot carts and wagons pass between said warehouse and the river; and how much longer will it take a cart to pass by said warehouse since the fence was built than before?

Answer. The fence, as originally constructed, did leave a space between it and the river, but of what extent I cannot say. Carts and wagons can pass between Dixion's warehouse and the river; but as to the difference of time it would require for them to pass, before and since the fence was erected, I cannot say.

5. Whether or no does the said lot, or any and what portion of it, cover any space formerly covered by the Potomac river? If so, when and by whom was the present lot created? Whether or no does it cost more or less to keep the said open space in repair than if it were originally solid ground? Whether or no does it require any filling up? And if so, to what extent? At whose expense is the said lot, as well as the open space between your warehouse and the river, kept in repair?

(The above question is *accepted* to by complainants' counsel.)

Answer. A portion of the dock has been filled in during the past year; but by whom, and at whose expense, I do not know. Whether or not it would cost more to keep the lot in repair than if it had been originally solid ground, I cannot say; nor whether the lot requires any filling up. I do not know at whose expense the lot and open space, between my warehouse and the river, are kept in repair.

Question by complainants' counsel. Have either of the lower windows in the eastern front of said Dixion's warehouse been obstructed; and to what extent; and within what period?

Answer. The south window on the east front was obstructed during the continuance of the pen which was erected on the ground; but how long it continued I do not know; and is now obstructed to a certain extent.

Cross examination resumed.

What do you mean by the window being obstructed? Do you mean that the fence excludes the light from entering the window, or that the Dixions were obstructed in their access to the outside of the window?

Answer. I mean that they were excluded from access to the outside

of the window so long as the entire fence remained; and that they are now partially obstructed by having to pass around the fence to get at the window.

Further this deponent saith not.

STEP. SHINN.

Deposition of Maskell C. Ewing.

Maskell C. Ewing, a witness of lawful age, introduced by the complainants, being first duly cautioned and sworn, deposes and says, in answer to the several interrogatories propounded:

1. Question by complainants' counsel. Where do you reside, and what public office do you hold?

Answer. I reside in the town of Alexandria, in the District of Columbia; am the surveyor of the town, and engineer of the Alexandria Canal Company.

Question by same. Examine the plat now shewn to you, and on which you will please write your name, and say, if you know, by whom the same was drawn, and when; and what property, buildings, and grounds is it intended to represent.

Answer. I made the plat marked A, in September last, for George O. Dixion, complainant in this cause; it was made from an actual survey; and represented, at the time it was made, the relative position of the buildings and wharves, laid down on the said plat agreeably to the measurements thereon indicated. My name is written on the said plat, and the word "surveyor" is thereto annexed. Since I made the survey above mentioned, I have examined the grounds again, and find that the fence, which was at the time of the survey on that part of the ground shewn by the red dotted lines, has been removed; and that a shantee, (shewn by the black lines surrounding the word "shantee,") has been since erected, and is connected with the main building by a black line, which shews the location of a part of the original fence; and also, that the corner of the dock has been cut off, as is shewn by the black dotted line in the said dock on the plat aforesaid.

3. Question by same. Describe particularly the fence as it was when first erected, and when the same was put up; and also the height of the fence and shantee; and whether either, at the time they were erected, or now, they, or either of them, obstructed the use and free access to either of the lower windows of the warehouse now occupied by the Messrs. G. O. & J. A. Dixion, or intercepted the view from either of said windows, or diminished the quantity of light which would otherwise enter said warehouse.

(Excepted to, so far as the said question relates to the shantee.)

Answer. The fence, as it was erected when I made the survey as above mentioned, extended on the dotted lines, red and black, commencing at the window of Ann J. Carey's warehouse, and forming three lines or sides of the square, terminating at the building of the said George O. and John A. Dixion. I did not measure the height of the fence; but, speaking from my recollection of it, should suppose that it

was about eight feet high. The shantee is a single story in height, about twelve feet high to the apex of the roof. They obstruct a free access to the south lower window of Dixion's house; and also obstruct the view, and diminish the light which would otherwise enter the said warehouse. The fence, as marked by the red dotted lines, having been removed, does not now present an obstruction to the said south window of Dixion's house, which may be approached from the side of Janney's wharf on the south; the shantee and fence still diminish the light, and impair the view from that window.

4. Question by same. At the time you made the plat referred to, was there any pavement adjoining the eastern front of said Dixion's warehouse? If so, describe it, and say if you know by whom and when the same was made, and how it has been used since you have known it.

Answer. At the time I made said plat there was a foot pavement on the eastern side of Dixion's warehouse, about four feet in width. I do not know when and by whom the said pavement was made; it seemed to be an old pavement; previous to the erection of the fence above described, that pavement was used as a thoroughfare for foot passengers, and had been so used ever since I had known it.

5. Question by same. In what manner has the ground or space to the east of said foot pavement, and between it and the Potomac river, been used since you have known it; has there ever been any obstruction over said ground, within your knowledge, previous to that above described?

Answer. The ground or space described in the above interrogatory has been used as a public thoroughfare since I have known it, and I have never known any obstruction thereon previous to that which is now under consideration.

6. Question by same. State whether or not the public have had as free and uninterrupted use of said ground since you have known it, as of any of the public streets in the town of Alexandria. (Excepted to.)

Answer. I believe they have. That is my impression. There is, perhaps, wharfage due to the owners of said wharves for goods laid on them.

7. Question by the same. Does the fence and shantee spoken of, or either of them, operate at this time as a public inconvenience, or injure the warehouse property of said Dixions; or did the obstruction as and when first erected prove a public inconvenience or an injury to the property of said Dixions. (Excepted to.)

Answer. The fence and shantee do operate as a public inconvenience by narrowing the thoroughfare in front of Dixion's building, and by throwing it more distant therefrom; and they injure the warehouse property by preventing a free access to its window from the outside of the building; the obstruction as and when first erected was a public inconvenience, and an injury to Dixion's property by preventing an approach to its window from the outside.

Cross examination of M. C. Ewing.

1. Whether or no does that part of the original fence which adjoins Dixion's warehouse cover any part, and what, if any part, of the south window; and what is the direction of said fence from the house; and at what distance was the eastern portion of said fence from the window; would it cast a shadow on the said window, and at what time of the day; and how much of the light would the fence exclude from that window?

Answer. The original fence runs up on the north side of the south window-frame of Dixion's house, but does not exclude the vertical light; the fence runs out at right angles, or perpendicular to the wall of the said warehouse; the eastern portion of said fence is distant from the said window twenty-six feet; that the northern portion of the fence would cast a shadow on said window at very early morning when the days are at their longest; it does obstruct some light from the window, but very little indeed.

2d. Whether or no has any, and what, building been put up on any portion of the open space between the town and the river in any portion of the town bordering on the river, and when, and by whom?

(Excepted to by complainants' counsel.)

Answer. I cannot answer that question understandingly; there is no line of limitation to the eastern side of the town known by me, except only the line to which proprietors can build their wharves.

3d. When and at whose instance did you put the words "Potomac strand" on the plat accompanying this deposition?

Answer. A few days after the plat was furnished the words "Potomac strand" were put down at the instance of Mr. Dixion, as were also the words "edge of the foot-way;" in two places on said plat Mr. Dixion desired me to put down the words "Potomac street," which I said could not be done, as there was no street there; when I suggested the use of the word "strand" as descriptive of all the space between the buildings and the river and immediately contiguous to the river.

4th. Do you know whether the persons who passed over the open space above described, did so by the license of the owners of said open space or not?

Answer. I do not know.

5th. Can you state the nature of the foundation on which the open space reposes; whether or not it is liable to require more or less repairs than ordinary property, and at whose expense the said lot is kept in repair; and whether or no it covers any space originally covered by the river?

Answer. I do not know the precise nature of the foundation here referred to; it is, I believe, made by filling in with earth, and does therefore require more repairs than are necessary on original earth or land foundations. I do not know at whose expense the said lot is kept in repair; all the space covered by that property was originally in the river.

6th. How long have you been an inhabitant of the town of Alexandria, and do you know who has been in possession of the warehouse now held by Dixions, and of the wharf property between it and the river, and whether it has been in possession of the owners thereof, or of a lessee, and whom?

Answer. I have been a resident of Alexandria about five years. I have always understood that the property belonged to the Irwin family; it has been occupied as stores, and that at the corner, now Dixion's, was occupied a part of the time by Howard, but whether as lessee or annual tenant I do not know.

7th. Whether or no does the fence in its original condition leave any and what extent of space between it and the dock; and how much longer would it take a cart to pass in front of the Irwin's warehouse after the erection of the fence than before?

Answer. The fence in its original condition left about twenty feet between it and the dock; it would take a cart but very little more time to pass in front of the said warehouse after the erection of the fence than before, although it is an obstruction to be gotten around.

8. In what manner and to what extent does the fence injure the warehouse of Dixion; whether or no does it ruin the value of said warehouse?

Answer. I do not consider myself competent to answer that question, and to say whether or no the fence injures Dixion's property at all, and to what extent.

8th. By complainant, again examined by complainant's counsel. Is the quantity of light admitted through the lower southern window of the eastern front of Dixion's warehouse greater or less than was admitted before the erection of the shantee spoken of, and during the continuance of the fence as it was first erected? (Excepted to as regards the shantee.)

Answer. I should say it was less.

Further this deponent saith not.

M. C. EWING.

Deposition of Benoni Wheat.

Benoni Wheat, a witness of lawful age, being next introduced by the complainants, and duly sworn, deposes and says:

1. Question by complainants' counsel. Where do you reside; how long have you so resided; what is your business, and where is your place of business?

Answer. I reside in Alexandria, where I have lived nearly thirty-five years; grocery and commission merchant is my occupation, and my place of business is on the north side of King street, at the foot thereof.

2. Question by same. How far is your warehouse from the warehouse owned by Messrs. George O. and James A. Dixions, and are you acquainted with the last named property?

Answer. My warehouse is distant from that of the Messrs. Dixion just the width of King street. I do not recollect the number of feet. I

am acquainted with their warehouse property, and have known it for a long time.

3. Question by same. Examine the plat marked A, now handed you, and on which you will please write your name, and say how far said plat presents a correct view of said Dixions' warehouse, of the adjacent grounds, buildings, and river.

Answer. I have made the proposed examination, and think the plat presents a fair and correct view of the points embraced in the question; my name is written thereon.

4. Question by same. Is there, between the eastern front of said Dixions' warehouse and the Potomac river any fence, building, or obstruction; if so, when and by whom was the same erected? Describe said fence, building, or obstruction, when it was first erected, and as it is now.

Answer. There is an obstruction between the eastern front of said Dixions' warehouse and the Potomac river, but when it was put there I cannot say precisely; its erection was superintended by Mr. Wm. H. Irwin, and I suppose was put there by his direction. The obstruction described now on plat A is not exactly the same as was originally erected.

Question by same. Describe the lines on said plat, within which you mean to say that said obstruction is now embraced, and explain how it differs from the original obstruction.

(Excepted to, so far as it goes to show any changes in the condition of the property.)

Answer. The three sides of a square embraced within the red and black dotted lines, the two arms resting on the lots of Ann J. Carey's and George O. Dixion's and John A. Dixion's lots, shew what was originally a fence, about eight feet high. The lines exhibiting the shantee, and that connecting said shantee with the said warehouse, constitute the present obstruction; after the original erection of the shantee, all that space between the shantee and Dixion's warehouse (to the west of the shantee was so built up as to make the obstruction continuous between the east front of the warehouse and the western line of the shantee, as now described on the plat; after that, again, so much of the shantee as was embraced between the east front of the warehouse and the western line, embracing "shantee," as it now stands, was removed, and I suppose by Mr. Howard, as I was told, he carried it to Fish town, but I do not know, and cannot state positively.

(Answer excepted to by defendant.)

6. Question by same. To what extent did the said obstruction, when originally constructed, or in any of the changes through which it has undergone, as above described, obstruct the approach to either of the lower windows in the warehouse of said Dixions, or intercept the view, or lessen the light from the interior of said warehouse?

(Excepted to, as far as relates to changes in the condition of the property.)

Answer. By the fence which surrounded the whole, as it was ori-

ginally constructed, access to the lower windows of the said warehouse was entirely obstructed from the outside; the only obstruction now remaining, as to the access, is that occasioned by the shantee and the fence connecting it with the warehouse. In regard to the obstruction of the view, and the exclusion of the light, I say, that whilst the shantee covered the whole ground from the eastern line of "shantee" (as marked on the plat,) to the eastern front of the warehouse, the view and light must have been entirely excluded and obstructed, and that since the partial removal of the "shantee" the light must be excluded, and the view impaired, but to a less extent.

(Excepted to by defendant.)

7. Question by same. Did the obstruction, when first erected, exclude the light from said windows, and to what extent?

Answer. I suppose that it did exclude the view and light, but partially.

8. Question by same. In what manner has the space of ground between the eastern front of said Dixion's warehouse been used since you have known the same; and have you ever known any obstruction erected over said space before that above spoken of?

Answer. The space above described has always been used as a common thoroughfare, and I have never known any obstruction of the same until that, now the subject of contest, was put up.

9. Question by same. In what manner has said space been used as a common thoroughfare?

Answer. For carts, drays, and carriages, and as a common highway.

10. Question by same. Have you ever known any of the previous owners of the property now owned by said Dixions, attempt to prohibit the public in the use of said ground as above described?

(Excepted to by defendant's counsel.)

Answer. I have not.

Question by same. Does the said obstruction as it now exists, or did it, as originally constructed, prove a public inconvenience or any special injury to the property of said Dixions.

(Interrogatory excepted to by defendant.)

Answer. Both, I should answer.

Cross examined.

1. Have you ever examined the window next to the fence, and the fence adjacent? Whether or no does that part of the fence which abuts on the warehouse of Dixions cover any portion of the glass of said windows, or any portion of the open space of said window; and what proportion of the light originally passing through said window was intercepted by the fence in its original condition?

Answer. I have never examined the said window and fence very particularly, but think they are accurately described on the plat before me. I do not think that the fence covers any part of the glass of the window, and it obstructs the light very partially.

2. You have spoken of the erection of a shantee and removal of part

of it; state about how long after the original fence was put up it was erected, and by whom, if you know. Who was at that time in possession of the property and making use of it?

Answer. Five or six weeks after the erection of the fence the shantee was put up, I suppose; but by whom, and at whose expense, I know not. The property was then occupied by Mr. Howard.

3. Whether or no is there any and what space left vacant between the said fence and the river? Is there, or is there not, a sufficient space so left for the passage of carts and wagons between the warehouse and the river? How much is any cart or dray delayed in passing across the wharf lot by the said fence? What peculiar injury does it do to the Dixions' warehouse, and what is the extent of such injury, and its nature?

Answer. Between the fence and the river there was a space which I suppose to be about thirty feet, prior to the alteration of the dock, but by said alteration the distance is considerably increased; I do not know how much. There is a sufficient space between the warehouse and the river for the passage of carts, wagons, &c. The delay in crossing the wharf lot is not much increased by the said fence. I consider the damage or injury to Dixion's property very considerable, by cutting off the immediate access and thoroughfare, and destroying the eastern front.

4. What do you mean by destroying the eastern front; and do you mean that the injury was effected by the original fence, to which alone the question refers?

Answer. By destroying the eastern front I mean to convey the idea that it prevents persons from having the same access to it as formerly, and also from the unsightly appearance of the fence erected in the thoroughfare to which I have above referred.

5. In further explanation, I mean to ask, what is the actual amount of the injury done by the fence in its original condition, and at that time?

Answer. It is of very great injury to the property; as to the actual amount of injury, I say, that if Dixion's house was mine I would not have the obstruction there for a thousand dollars, and I speak of that in reference to the eastern front.

6. Whether or no did the river Potomac ever, and when, extend over any and what portion of the space now covered by King street and the buildings on that part of the town? What use has been made of the vacant lot between your warehouse and the river by the owners of it? By whom is the vacant space between the warehouse of Dixions and the river kept in repair?

Answer. Originally the Potomac river came up a square to the west of the present water. The vacant space or lot between my warehouse and the river has been used as a common highway. The wharf east of that highway has been used and enjoyed by the Ramsay family. The highway to the east of my warehouse has been secured to me by deed from those under whom I hold. The Irwin family, prior to Mr.

Dixion's possession, have cleared the ground and thrown gravel thereon between Dixion's warehouse and the river, and kept it in repair.

Further this deponent saith not.

BENONI WHEAT.

Thursday evening, 6 o'clock, April 17th, 1845. The farther proceeding under this commission is adjourned until to-morrow morning, at 9½ o'clock, to meet at the office of Charles McKnight, in Alexandria, D. C.

CHARLES McKNIGHT,
B. HOOE.

Deposition of Jno. Ball.

Friday morning, April, 1845. The further taking of depositions in this cause is resumed, according to adjournment; and John Ball, a witness of full age, introduced by the complainants, being duly cautioned and sworn, deposes and says:

1. Question by the same. Where do you live; how long have you so resided; and what is your occupation?

Answer. I am a bricklayer and stone mason, and live in Alexandria, where I have resided for more than forty-five years.

2. Question by same. Are you acquainted with the warehouse property now in the occupation of Geo. O. and John A. Dixion, at the foot of King street, in Alexandria?

Answer. I am.

3. Question by same. When was the said warehouse built; by whom; who worked on said building; how many doors or windows, if any, are there in the eastern front of said warehouse; describe it accurately.

Answer. The said warehouse was built in 1804 by Neale, Mooney, and Adams. I was one of those who worked on it from the beginning of the brick work 'til it was finished; there were six windows and three doors in the eastern front, in the end fronting the river, that is, a door and two windows on the first and second floors each, and the like arrangement in the gable end.

4. Question by same. For whom was the said warehouse erected; is there any brick pavement adjoining said warehouse, and between its eastern front and the Potomac river? Describe said pavement, if any, and say for whom and by whom the same was made.

Answer. It was built for Thomas Irwin. There is a small piece of pavement on the eastern front in front of the door, but how far it extended I do not know, nor for whom, nor when the same was made.

5. Question by same. Has there at any time, since said warehouse was erected, been any fence, building, or other obstruction, between the eastern front of said warehouse and the Potomac river; if so, state when the same was erected, and describe it as when first erected, and the changes, if any, it has undergone since, and its proximity to said warehouse and relative situation thereto.

(Interrogatory and answer excepted by *by* defendant, so far as they relate to any changes in the fence.)

1288

Answer. I never knew any fence or other obstruction to be erected on said property since the said warehouse was built, until that which was lately put up, as I understood, by Mr. Irwin. That obstruction at first consisting of a small shantee put up against the east end of the said wharehouse, was placed there some time in the last fall. I think when first erected, that shantee or obstruction was about twelve feet in front, and extending about twelve or fifteen feet from east to west, and going back to the warehouse of Dixion. It was one story in height; I never examined its extent particularly, but suppose its dimensions were such as I have described. I do not personally know any thing of the changes that have been made therein.

(This answer is excepted to by defendant's counsel.)

6. Question. Was the access to the door or windows, as above described by you, in the eastern front of said warehouse, prevented by said obstruction, when the same was erected, or is [it] at this time; is the view from either of the lower windows intercepted by said obstruction, or does it in any wise, and to what extent, diminish the quantity of light which, were it removed, would enter the warehouse of said Dixions?

Answer. Access to the door and windows below was obstructed on the eastern front of said warehouse; by the said shantee; the view from the lower windows is intercepted; it was almost an entire obstruction to the light of the lower windows.

(This question and answer excepted to by defendant's counsel.)

7. Question. Examine the plat now shown to you, marked A, and on which you will write your name, and say whether or not, and to what extent, does it present a correct view of the warehouse of said Dixions, the adjoining property, ground, obstruction, and river.

Answer. I have examined plat A, on which I have written my name, and think it presents a correct view of all the points embraced in the above question.

8. In what manner has the ground between the eastern front of said warehouse and the river Potomac been used since the said warehouse was erected?

Answer. It has always been used as a public thoroughfare.

9. Question by same. Have you ever known any of the owners of the adjacent property to attempt to restrain the public in passing over said ground as a thoroughfare previous to the obstruction above spoken of?

(Excepted to by defendant.)

Answer. No.

John Ball cross examined.

1. Prior to the erection of the warehouse of the Dixions, did any building exist between the main body of the block of buildings, of which Dixion's warehouse is one of the wings, and the river; what was the extent of the open space between the main building and the river prior

to the erection of the wing in 1804; were the wharves and docks then in their present positions at that time; if not, how have the same been altered?

Answer. No building did exist between the main body of the block of buildings of which Dixion's warehouse is a wing and the river, prior to the erection of Dixion's warehouse to my knowledge; from the main building to the head of the dock, I should say, was forty feet, prior to the erection of Dixion's warehouse in 1804. The wharves and docks may have been altered since that time; I do not recollect their precise position.

2. By whom was the open space between the main building aforesaid and the river filled in and constructed; do you know whether or no the said Thomas Irwin used the open space between the warehouse of Dixions and the river, and for what purposes, and in what manner; do you know whether any, and what, use is made of said open space by vessels or freighters, or owners of vessels lying adjacent thereto?

Answer. I do not know by whom the said open space was filled in and constructed; nor do I know any thing in answer to this interrogatory.

3. How far does the highway used by the public, of which you spoke in answer to a former question, extend? Does it extend to the north and south? And if so, how far in either direction?

Answer. Speaking in reference to the particular property, now the subject of controversy, I should say, that the public highway above spoken of would extend from the corner of Dixion's house on King street, in a southern direction, to the alley which passes between Ann J. Carey's house and the storehouse of Stephen Shinn.

4. Without reference to the warehouse of Dixions at all, state how far, if at all, to the north or south of Irwin's wharf, has the open space between the warehouses and the river been used in the same manner as the open space in dispute in this suit.

(Excepted to by plaintiffs' counsel.)

Answer. For many years the open space between the buildings and the river, extending from Ramsay's corner to McVeigh's corner, has been used as a public thoroughfare for carriages, drays, carts, &c. I have never known any obstruction within that extent. From Ramsay's corner northward the free passage of wagons, carts, &c., has not been permitted; nor has the thoroughfare extended south of Prince street; there is not room for carts and drays, &c., to pass around Joseph Harris' corner, and by Mr. Fowle's warehouse; and the Messrs. Ramsay have wood generally piled up between their warehouse and the river, so as to prevent the free passage over that space as a thoroughfare.

5. Do you mean to say that Thomas Irwin never used his lot in the same manner as the Ramsays'; or you do not remember him so to have used it? Can, or cannot carts and drays pass between the McVeigh's warehouse and the river, into Prince street? In what manner is Smoot's property north of Ramsays' used? Do you mean to say,

that the owners of wharf lots between Shinn's and Prince street, have never used their open space as the Ramsays have, or that you do not remember them so to have used it?

(This question is excepted to by complainants' counsel.)

Answer. I never knew Thomas Irwin to use the lot in front of Dixion's warehouse, in the same manner as the Messrs. Ramsay use that at the east front; carts and drays can pass around McVeigh's warehouse into Prince street. Smoot's lot, to the north of Ramsay's, is used for depositing lumber, wood and scantling, with which it is commonly occupied. I mean to say, that I do not remember the owners of wharf lots between Stephen Shinn's and Prince street to have used them as the Ramsays use the lot on their east front.

6. Which way does the gable end of the Dixion's warehouse look?

Answer. To the east.

7. On which side of King street does the said warehouse front?

Answer. To the north.

8. How many doors and windows were constructed in that portion of the house fronting on King street, at the time the property was sold to the Dixions?

Answer. I am not able to say.

9. How many were constructed in that front by Thomas Irwin, and existed during his ownership?

Answer. I do not know.

10. You say the plat is a correct representation of the property in dispute, do you mean to say that it is a correct representation of that property ever since the erection of the obstruction?

Answer. The windows in Dixion's house on King street do not appear to be laid down on this plat. The plat is a fair representation of Dixion's house as it was originally built. There have been some alterations made in the windows and doors of that house with which I am not acquainted, and cannot describe.

11. Do you mean to say that in other respects the said plat is a correct representation of the said property and lot ever since the erection of the obstruction?

Answer. With the exception of the alteration of the windows, it is a correct representation.

Further this deponent saith not.

JOHN BALL.

Deposition of Robert Jamieson.

Robert Jamieson, a witness of lawful age, introduced by the complainants, being duly cautioned and sworn, deposes and says:

1. Question by complainants. Where do you reside, how long have you so resided, what is your occupation, where your place of business, and what public office, if any, do you hold?

Answer. I reside in Alexandria, where I was born, and my occupation is biscuit baker; my place of business is on Water, between Queen and Cameron streets; the public offices I hold are "President of the

Common Council of Alexandria," and "President of the Farmers' Bank of Alexandria."

2. Question by same. Are you acquainted with the warehouse property owned by George O. and Jno. A. Dixion, at the foot of King street, in Alexandria? If so, state whether or not there is any obstruction, fence, or building, near or adjoining said warehouse, and between its eastern front and the Potomac river.

(Excepted to as far as the shantee is involved.)

Answer. I am acquainted with the property referred to in the above question; but know nothing of any other obstruction near or adjoining the said warehouse, except the shantee which now stands there. I know nothing of the fence.

3. Question by same. When was the obstruction you speak [of] put up; and have you ever known, previous to its erection, any building or obstruction between the eastern front of said warehouse and the river Potomac.

(Excepted to by defendant's counsel.)

Answer. I do not recollect the exact time when the said obstruction was erected. I think it was last spring; but certainly within the last two years. Before the obstruction here spoken of was put up, I have never known any building or other obstruction between the eastern front of the warehouse of Dixion and the Potomac river.

4. Question by the same. Was there, at the time said obstruction was erected, any pavement near or adjoining the eastern front of said Dixion's warehouse? If so, state its extent; when and by whom made; and how has the same been used previous to, and up to the time of, the erection of said obstruction.

Answer. Before the present obstruction was erected, my impression is that there was a pavement on the eastern front of the warehouse, put there for the accommodation of the house, and used by foot passengers generally. By whom it was made I do not know, nor when. I mean to say that the pavement was so used up to the time of the present obstruction, at which time Howard was in the house.

5. Question by same. In what manner was the space of ground, now covered by said obstruction, used prior to, and up to the time of, its erection?

Answer. It was used as a public thoroughfare.

6. Question by same. What do you mean by the word "thoroughfare?"

Answer. I do not know that I can express my meaning better than by the word itself—thoroughfare or public highway.

7. Question by same. Does the said obstruction now, or as when first erected, prove a public inconvenience or otherwise; and how is the value of the warehouse property of said Dixions affected by it?

Answer. I should certainly say it was a public inconvenience, and that it affects the value of the property; but to what extent I cannot say.

Further this deponent saith not.

ROBERT JAMIESON.

Deposition of Andrew J. Fleming.

Andrew Jamieson Fleming, of lawful age, a witness introduced by the complainants, being duly sworn, deposes and says:

1. Question by complainants' counsel. Where do you reside, how long have you so resided, what is your occupation, and where is your place of business?

Answer. I was born in Alexandria, and have resided here all my life; I am engaged in the grocery business, and my location as a merchant is at the corner of King and Water streets. I am also an auctioneer in this town.

2. Question by same. Did you ever occupy the brick warehouse at the foot of King street, in said town, now occupied by George O. and John A. Dixion; if so, during what period?

Answer. I did occupy the warehouse above mentioned, from the year 1833 or 1834, to the year 1840.

3. Question by same. Did you occupy it as owner or tenant; if as tenant or lessee, from whom did you rent the property?

Answer. I occupied that property at first, I think, as the tenant of James and William H. Irwin; and continued afterwards to occupy it as the tenant of James Irwin alone.

4. Question by same. Did you or not, during the period mentioned, also rent the wharf property near said warehouse, claimed by the Irwin family?

Answer. I never rented the wharf property.

5. Question by same. Was there, during the period you occupied said property as tenant, any fence, building, or other obstruction, between the eastern front of said warehouse and the Potomac river; or was there any building or obstruction by which access to the door and windows in the eastern front of said warehouse was prevented or interrupted?

(Excepted to by defendant.)

Answer. There was not any such obstruction, nor any other.

6. Question by same. During your occupancy of said property, did you or not exercise the sole use, enjoyment, and possession, of the said space of ground immediately between the eastern front of said warehouse and the Potomac river; or in what manner was the said space of ground used, and by whom?

Answer. During my occupancy of the said property, I used the wharf for piling up wood, or goods, &c., to the end of the dock, and paid the Messrs. Irwin wharfage, and at one time, as their agent, collected wharfage from others for them. I used the ground immediately in front of the store and contiguous thereto, for putting out my goods, &c., but the open space above described I did not use in any other way than as other citizens of the town used it, as a public thoroughfare.

7. Question by same. Was there any pavement near or adjoining the eastern front of said Dixion's warehouse, and between it and the

river Potomac; if so, when and by whom was the same made; and was it or not in use, and by whom, when you occupied said warehouse?

Answer. There was no other pavement on the eastern front of said store or warehouse, than a small brick pavement along the eastern front of the said building; it was some three or four feet wide, and used for the travel of foot passengers; whether it was put down before I occupied that warehouse or not I am not positive, but think it was there before I became the tenant.

Question by the same. Since you have known said space of ground, and that portion of it covered by the pavement of which you have spoken, have you ever known any one prevented from passing over said space before the erection of the fence or obstruction now on it?

Answer. I have not. (Interrogatory excepted to by defendant.)

9. Question by the same. To what extent and in what manner was the said space of ground used by the public?

Answer. It was used as a common thoroughfare for foot passengers, and for wagons, carts, and other kinds of vehicles. I never knew any thing to the contrary.

Cross examination of Andrew J. Fleming.

1. By whom was the said open space kept in repair; was the wharf ever enclosed so as absolutely to exclude the public; were there or not, when you occupied the above warehouse, any and how many windows and doors opening on that part of the house fronting on King street?

Answer. I have seen ballast taken from the vessels placed on the wharf, and thrown on the open space between the buildings and the river, to raise the ground, or to fill up holes therein; and I presume that was done by the owners of the wharf, but cannot say it was so, for I have no positive information or knowledge on the subject. I never asked the question, by whom the ballast was so laid on the wharf, and spread over the open space aforesaid; and I do not know by whom it was done. The wharf was never enclosed during my occupancy of the premises aforesaid, nor at any other time within my recollection, so as to exclude the public. When I was the occupant of that property, there was one large door opening on King street, about the middle of the building, and I think eight windows, four on the first, and four on the second floor; there was no door on the second floor opening on King street, as far as I recollect; the goods which were carried up, were hauled up through an opening in the upper floor.

2. To whom did the wharfages paid, for vessels lying at the said wharf, and in the adjacent docks, belong; how were the windows of said warehouse, whether on King street, or in the gable end, secured; and were there any shutters to the windows in the gable end when you occupied the house, and up to Dixion's purchase? By whom, and since what time, have the shutters been placed to the said windows at the gable end?

Answer. The wharfages above spoken of were paid to the owners

of the wharf property to whom they belonged. The lower windows on King street, and in the gable end of that building, were secured by iron bars perpendicularly set in; the upper windows had no bars or other security, and none of the windows above nor below had any shutters whilst I was there, nor had they, until Mr. Dixion's purchase, to the best of my recollection and knowledge. I presume Mr. Dixion had the shutters placed on the windows as they now are, but since what time it was done I am unable to say.

Further this deponent saith not.

ANDREW J. FLEMING.

Deposition of Thomas Sanford.

Thomas Sanford, of lawful age, a witness, introduced by the complainants, being duly sworn, deposes and says:

1. Question by complainants' counsel. Where do you reside; how many years have you so resided; what is your occupation; where your place of business; how far is your place of business from the warehouse occupied by Geo. O. and Jno. A. Dixion, at the foot of King street, in Alexandria?

Answer. I reside in Alexandria, where I have lived for sixty-four years; my occupation is that of sail-maker; and my place of business is at the lower end of King street, immediately opposite to the warehouse of Messrs. Dixion, and separated from it by the width of that street.

2. Question by same. How long have you occupied the house above described as your place of business?

Answer. Ever since it was built; for thirty years I think.

3. Question by same. Is the space of ground in front of and between the eastern wall of said Dixion's warehouse and the Potomac river in any manner obstructed? If so, when was said obstruction erected; and in what manner was the said space of ground now covered by it used prior to its erection?

Answer. There is an obstruction occasioned by the erection of a fence, but it is so small that carts and drays can pass around it very well; that obstruction was erected within the last twelve months; before the erection of the said obstruction the open space which it now covers was used as a thoroughfare.

Question by same. Was there ever within your knowledge any obstruction on said space of ground previous to that above spoken of?

(Excepted to by defendant's counsel.)

Answer. Not to my recollection.

Cross examination.

1. Do you know when and by whom the space covered by Dixion's warehouse, and the wharf lot between it and the river, was constructed; at whose expense is the said wharf lot, and by whom, kept in repair? Does it, or does it not, to any and what extent, require such repairs as are required by wharves; and is the expense in keeping it in repair greater or less than it would have been had it been originally firm land?

(Excepted to by complainants' counsel.

Answer. The warehouse of Messrs. Dixion was built by Thomas Irwin; when the ground was filled up I do not recollect; after Thomas Irwin (the father) bought the wharf, he built out beyond it on piles, and after the father's death Thomas Irwin (the son) built out still farther, and on piles; the one having built on piles and filled in with stone and earth, and the other having driven piles, and covered them with plank. I should say that the wharf lot aforesaid is kept in repair by and at the expense of the Irwins. It does require such repairs as wharves generally require, and the expense of keeping it in repair is greater than it would have been if it had been originally firm land.

Question by complainants' counsel. How do you know that the wharf lot above spoken of is kept in repair at the expense of the Irwins?

Answer. I do not know it.

Further this deponent saith not.

THO. SANFORD.

The farther proceeding in taking the depositions in this case is postponed until Friday morning next, the 25th day of April, 1845, at the office of Charles McKnight, in Alexandria, at 9 o'clock in the morning.

CHARLES McKNIGHT,
B. HOOE,
Commissioners.

GEO. O. DIXION and JNO. A. DIXION, complainants,
vs.
WILLIAM H. IRWIN, defendant.

Friday morning, April 25th, 1845.

This commission is again this day opened, and the farther proceeding in taking depositions in this case, on the part of the complainants, being now resumed according to adjournment, at the office of Charles McKnight, in Alexandria.

Deposition of Dan'l Minor.

Daniel Minor, a witness of lawful age, is introduced on the part of the complainants, who, being duly cautioned and sworn, deposes and says as follows, viz:

1. Question by complainants' counsel. Where do you live, and how long have you so resided?

Answer. I resided in Alexandria, in the District of Columbia, where I have lived mostly for about thirty years past, having spent a few years, in the intermediate time, between 1806 and the present time, on my farm in this neighborhood.

Question 2d by complainants' counsel. What public office, if any, do you hold in the District of Columbia?

Answer. That of deputy marshal under A. Hunter, marshal for the District of Columbia.

3. Question by same. Who served the subpœna of injunction which issued on the original bill in this cause, and when was the same so served; and state all the circumstances that you may know connected with the service of said process.

Answer. On the seventh day of September, 1844, I called to see Mr. Irwin, (the defendant in this cause,) and found him at the building or obstruction on the wharf near the warehouse of the Messrs. Dixion, (the complainants.) I read to him the injunction, when he answered and said that the said building was on his own ground, and that he considered he had a right to construct such building on his own property; and that he should go on and complete the work which he had begun; which I considered in substance as declaring his disregard of the process.

4. Question by same. Was the obstruction referred to in the above answer completed when you served said process?

Answer. It was not entirely completed. I do not positively recollect, but my impression is, that the door or gate was not hung, and that the carpenter was then engaged in nailing up the braces to steady the work, which he seemed to be in great haste to finish; the small building or hut was put up; and what I have said above as to the door and braces remained to be done to complete it.

5. Question by same. In what manner has the ground been used on which said obstruction was erected, prior thereto?

Answer. I believe it has been used as a common highway.

6. Question by same. What property, if any, does William H. Irwin, the defendant in this cause, now own; and what property, if any, has the said Irwin owned at any period within the last twelve months liable to seizure and sale under an execution issuing from the common law courts?

Answer. That is a hard question for me to answer. I cannot say what property Wm. H. Irwin has, or what he has not. I have lately returned a good many executions against him—"no property found to levy upon." My practice as deputy marshal has been, and is, to await for the plaintiff to show me property on which I am to make the levy, and as no property was shewn to me on which to levy the executions above mentioned, I made the return as above described.

Cross examination.

1. Can you state whether or not the injunction you speak of having read to William H. Irwin required him merely not to erect the fence or enclosure, or went further, and required him to pull down the same if erected?

2. You speak of a "hut" having been erected, do you mean to say a hut was then erected, or that there was any building on the ground besides the fence?

3. Was the gate of which you speak intended to allow a passage through the said inclosure in front of the said warehouse from north to south, or was it merely an entrance to the enclosure?

4. Was or was not the fence sufficiently completed at the time of the service of the process to prevent persons from passing from north to south over the space comprised within the enclosure, as effectually as after the braces were fixed to it?

Answer 1. The injunction which I read to Mr. Irwin contained a prohibition to erect any obstruction between Dixion's warehouse and the river, and required that, if any such had been already constructed, it should be removed. The object of the injunction is fully expressed by the endorsement which appears on the writ.

Answer 2. Whether the building or "hut" or obstruction, of which I spoke in my answer to complainants' fourth interrogatory, had a roof on it or not I cannot say; the "hut" or building or obstruction, whatever it may be called, was then completed, with the exception of the door or gate and the braces described in my foregoing answer to complainants' fourth interrogatory.

Answer 3. I considered the gate or door an entrance to go into the enclosure from the street or wharf, I should say from the wharf or highway; there is no street there that I know of.

Answer 4. The obstruction was there, but was not completed. There could have been no passage on foot, or by carts, &c., over the ground comprised within the enclosure, except by knocking it down.

5. You speak of the said open space having been used as a highway, has any street ever been laid off over the said space to your knowledge? Can you say whether the persons passing over the said property did so under a claim of right, or simply by license of the owners?

Answer 5. The space of which I have spoken is an open ground between the buildings and the wharf; I do not know of any street having been laid off over it. By what right persons have been accustomed to pass over that open space I do not know.

Further this deponent saith not. D. MINOR.

DISTRICT OF COLUMBIA,
Alexandria county, sct.

We, Charles McKnight and Bernard Hooe, two justices of the peace for the county of Alexandria, acting under the authority of the commission hereto attached, and in pursuance of the annexed notice, do hereby certify, that the foregoing and annexed depositions, covering forty-three pages, were taken before us at the office of Charles McKnight, in Alexandria aforesaid, between the hours of sunrise and sunset on the several days of taking the same, commencing on the eleventh day of April, 1845, and continued by adjournment from day to day as appears on the said depositions, until all were completed; that the answers in the said depositions were wholly written by Bernard Hooe, one of the said commissioners; that then the said witnesses respectively read over their said several depositions, reduced to writing as aforesaid, subscribed the same in our presence, and then and there made oath in due form of law that their said several and respective depositions were true as they are written, to the best of their knowledge and belief respectively.

foregoing depositions.

And we do also certify, that we are not, nor is either of us, counsel or attorney for either or any of the parties in the said caption mentioned, nor are we, nor is either of us, interested in the event of the cause.

And we do also further certify, that the costs of taking the aforesaid depositions is twenty-four dollars. All which is certified to the circuit court of the United States for the county and district aforesaid, this 25th day of April, in the year 1845, under our hands and seals.

CHARLES McKNIGHT, [L. S.]
B. HOOE. [L. S.]

[For plat see original.]

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Henry T. Harrison, D. G. Smith, and James Sinclair, justices of the peace, gentlemen, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection in diligently examining Charles J. Catlett, in behalf of William H. Irwin, defendant, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, between George O. Dixion and John A. Dixion, complainants, and William H. Irwin, defendant, we therefore desire you, that, at such time and place as you shall appoint, you assemble yourselves together, and the witness aforesaid before you, or any two or more of you, that you call, and cause to come, and diligently examine on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined him, and taken said witness's deposition as aforesaid, that you return the same to our said court, certified under your hands and seals, inclosed together with this writ.

Witness William Cranch, esquire, chief judge of our said court, this first day of April, in the year of our Lord 1845.

CASSIUS F. LEE, *C. C.*

Messrs. George O. Dixion and John A. Dixion, April , 1845, gentlemen:

You will please take notice, that on Monday, the 21st day of April, 1845, between the hours of sunrise and sunset, at the tavern of James Sinclair, in the town of Leesburg, in Loudon county, in the State of Virginia, I shall proceed to take the deposition of Charles J. Catlett, to be read in evidence at the hearing of a certain injunction suit now depending before the circuit court of the District of Columbia, in the county of Alexandria, on the equity side thereof, wherein you are complainants and I am defendant.

W. H. IRWIN.

ALEXANDRIA COUNTY:

This day personally appeared before the subscriber, a justice of the peace in and for the county aforesaid, Henry Cryss, and made oath that on the 9th of April, 1845, he served a copy of the within notice on John

A. Dixion, and George O. Dixion being sick and confined to his bed, a copy of said notice was left at his house with his mother, a member of the family, on the day aforesaid.

Given under my hand this 10th day of April, 1845.

JOSEPH EACHES, *J. P.*

Interrogatories to be administered to Charles J. Catlett, a witness to be examined under the annexed commission from the circuit court of the District of Columbia.

1. Do you know the parties, complainants and defendant, or either, and which, of them?

2. Were you or not, at any and what time, and for what period, of the town of Alexandria, or connected with the said town in business transactions?

3. Whether or no were you acquainted with the late Thomas Irwin, deceased, of Alexandria, for any and what period; and what relation, if any, was he to the defendant, William H. Irwin?

4. To whom did the large warehouse and wharf lot between said warehouse and the river Potomac, and the wharf all situated at the east end of King street, on the south side, extending from King street south to an alley, and from Union street on the west to the river on the east, belong; in whose possession has the said property been? Whether or no has any and what portion of said property been rented to any and what persons; and who has received and owned the rents and profits, and wharfage and dockage, accruing from said property?

5. Whether or no was the said wharf lot, or open space between the warehouse and the river, used by the said Thomas Irwin, or any other and what persons, and in connection with any and what other property?

6. Whether or no has there ever been, and when, any and what merchandise, or wood, or lumber, or materials for the cargo of vessels, or anchors, or any other, and what kind of property, placed or piled on any and what portion of said wharf lot, and by whom, or by whose authority?

7. Whether or no has or have any person or persons, horses, or carts, or drays, been turned off from, or ordered, or prevented from passing over, or standing on, any and what portions of said wharf and wharf lot, and when, or by whose authority, and in what manner, and by whom in particular, and under what circumstances?

8. Whether or no did the owner or owners of the said before described warehouse and wharf property, or any and which of the owners, exercise any and what control or authority, or rights of ownership, over the said wharf lot, or any and what portion thereof, and in what manner in particular?

9. Whether or no have the owners of said property made use thereof for commercial, or any other and what purposes, or in connection with any and what warehouse and wharf, and in what manner, and to what extent, and for whose benefit and convenience?

10. Whether or no has any and what person received, or been entitled to demand and receive, from any vessels lying at the wharf, or in

the docks, adjacent to said wharf lot, and fastened to the shore, any wharfage or dockage; and whether or no the owners, or freighters, or crews, and captains of said vessels, or any and which of them, have any and what privilege on, or over, or with reference to the wharf and docks, and open space adjacent thereto, in return for the payment of said wharfage or dockage?

11. Have or have not the owners or masters of vessels so fastened, and paying wharfage as aforesaid, been accustomed to any and what extent to unload their cargoes, or any and what portions thereof, on any and what portion of said wharf lot, or to take in their cargoes from the same, or any part thereof?

12. To whom, in general, does the land or open space between the eastern end of the warehouses in Alexandria, next the Potomac river, and the said river, belong; is the same public or private property?

13. Whether or no is there any highway or public street in said town, between the eastern ends of the last range of warehouses in said town and the Potomac river; by whom is said space kept in repair; and in particular, by whom is the wharf lot between Irwin's warehouse and the river kept in repair, and at whose expense, and whether at much or little cost; and whether the said cost of repair is increased or diminished by the peculiar nature and construction of said wharf lot, and what it rests on, and what is the construction of the same, and when and by whom it was made, and at whose expense; and whether or no the river Potomac, at any time, and when, covered any and what portion of the space now occupied by King street, and the wharf lot, and warehouse aforesaid?

14. Do you or do you not know any thing further that can benefit either or any party to this cause? If you know any such matters or things, please state them.

Deposition of Charles J. Catlett.

Deposition of Charles J. Catlett, taken in pursuance of the annexed commission and notice, at the tavern of James Sinclair, in the town of Leesburg, in Loudon county, Virginia, on Monday the 21st day of April, 1845, between sunrise and sunset of said day, to be read in evidence on behalf of the defendant, in a certain cause now pending and undetermined in the circuit court of the District of Columbia, for the county of Alexandria, sitting in chancery, wherein George O. Dixion and John A. Dixion are complainants, and William H. Irwin is defendant.

The said Charles J. Catlett, being of lawful age, and first duly sworn, deposes and says, in answer to the interrogatories hereto annexed as follows, to wit:

Answer to 1st interrogatory. I know them both.

Answer to 2nd interrogatory. I was, from 1808 to 1823.

Answer to 3d interrogatory. I was acquainted with him the whole period of my residence in Alexandria.

Answer to 4th interrogatory. I believe Mr. Irwin has owned one half

of said warehouse and lot ever since I recollect, and the other half about thirty years. I occupied one of the warehouses for some several years, and paid the rents and wharfage to Mr. Irwin.

Answer to 5th interrogatory. It was an open space used by Thomas Irwin, and any and every other persons; it was used in connexion with the wharf, being an open thoroughfare.

Answer to 6th interrogatory. There was, by authority of Mr. Irwin; but the thoroughfare for drays and carts was not obstructed thereby.

Answer to 7th interrogatory. I do not know.

Answer to 8th interrogatory. I knew no body else but Mr. Thos. Irwin, deceased, to exercise ownership over said property.

Answer to 9th interrogatory. Said Mr. Irwin occupied a part of the property and used it for commercial and other purposes.

Answer to 10th interrogatory. As far as I know and believe, Thomas Irwin, deceased, received all the dockage and wharfage accruing from said property; since said Irwin's decease I have known little or nothing about it.

Answer to 11th interrogatory. Masters and captains of vessels have been in the habit of unloading their vessels and of occupying the whole wharf, or any portion thereof as suited their convenience.

Answer to 12th interrogatory. I do not know; it did belong to Thomas Irwin at one time.

Answer to 13th interrogatory. There always was an open way, but whether public or private property I do not know. Thomas Irwin, I believe, kept it in repair at his own costs; whether much or little I don't know; and to the residue of this interrogatory he can state no further.

Answer to 14th interrogatory. I recollect none.

Interrogatories by plaintiffs.

Interrogatory 1. What length of time did you occupy the warehouse at the foot of King street, now occupied by Messrs. Dixion?

Answer. A number of years; I can't tell how many.

Interrogatory 2d. Was there any doors on King street when you occupied said building?

Answer. There was none; there was a door in the east front, through which all the business of the house was done.

Interrogatory 3d by same. Have you or not always considered the east front of said building a public thoroughfare?

Answer. It was always used as a public *as a public* thoroughfare.

And further saith not CHARLES J. CATLETT.

We, H. J. Harrison, Dan. G. Smith, and James Sinclair, commissioners named in the commission hereto annexed, do hereby certify, that the foregoing deposition of Charles J. Catlett was taken before us at the time and place, in the manner, and for the purpose mentioned in the caption thereof; that the said deponent was first duly sworn to testify the truth, the whole truth, and nothing but the truth, in relation to the matters involved in the suit named in said commission; and that his answers to

the interrogatories propounded to him as aforesaid, were committed to writing by Charles J. Catlett in our presence, and by him signed before us.

Given under our hands and seals this 21st day of April, 1845.

H. J. HARRISON, [SEAL.]
D. G. SMITH, [SEAL.]
JAMES SINCLAIR. [SEAL.]

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to B. Hooe, Joseph Eaches, and Wm. N. Mills, justices of the peace, gentlemen, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection in diligently examining James Irwin, Thos. Smith, James Smith, Dr. Jas. Carson, Reuben Johnston, Thos. Irwin et al., in behalf of William H. Irwin, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, between Geo. O. and John A. Dixion vs. Wm. H. Irwin; we therefore desire you, that at such time and place as you shall appoint, you assemble yourselves together, and the witnesses aforesaid before you, or any two or more of you, that you call and cause to come, and diligently examine on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined them and taken their depositions as aforesaid, that you return the same to our said court, certified under your hands and seals, inclosed together with this writ. Witness William Cranch, esquire, chief judge of our said court, this 28th day of April, in the year of our Lord 1845.

C. F. LEE, *C. C.*

To Messrs. Geo. O. Dixion and John A. Dixion: Take notice, that on Monday the 28th inst., at the mayor's office, in the town of Alexandria, between the hours of ten o'clock, A. M., and sunset, and at the same place, and between the same hours, on such days thereafter as the commissioners for taking the same shall appoint, until the taking of the same shall be completed, I shall proceed to take the depositions of James Irwin, Thomas Irwin, Thomas Smith, Reuben Johnston, Solomon S. Masters, Dr. Jas. Carson, James Smith, Josiah H. Davis, and others, to be read in evidence on my behalf, in a certain suit in chancery now pending in the circuit court of the District of Columbia, for Alexandria county, in which suit you are complainants, and I am defendant. Alexandria, 22d April, 1845.

WILLIAM H. IRWIN.

ALEXANDRIA COUNTY, *to wit:*

This day Thomas Slatford came before me, a justice of the peace for the county aforesaid, in said county, and made oath in due form of law, that on the 24th day of this present month he left a true copy of the within notice at the store of George O. Dixion and John A. Dixion, copartners, in the hands of the said John A. Dixion.

Given under my hand this 24th of April, 1845.

R. JOHNSTON.

GEO. O. & JOHN A DIXION,
vs.
W. H. IRWIN.

Depositions of witnesses taken before the undersigned commissioners in virtue of the annexed commission, and in pursuance of the annexed notice, on Monday, the 28th day of April, 1845, at the mayor's office, in the town of Alexandria, between the hours of ten o'clock, A. M., and sundown on the same day, and on the other days and times to which the said commissioners adjourned, to be read in evidence at the hearing of a certain suit now depending before the circuit court of the District of Columbia, for the county of Alexandria, wherein George O. Dixion and John A. Dixion are complainants, and William H. Irwin is defendant, on behalf of the said defendant.

Deposition of Reuben Johnston.

Reuben Johnston, a witness of full age, having been produced and sworn in behalf of the defendant, answers to the following interrogatories as follows:

1. Whether or no have you ever, and when, been present at a conversation between the complainants, or either, and which of them, and the defendant, W. H. Irwin, respecting the sale of the warehouse purchased by the complainants at the end of King street; if so, state what was the subject of said conversation and its nature; state all that occurred.

Answer. About the time when the first set of depositions were being taken in this cause, the complainant, George O. Dixion, and the defendant, William H. Irwin, met in my office in Alexandria, and entered into conversation respecting the claim asserted by complainants in this cause. In the course of the conversation, said Irwin charged said Geo. O. Dixion with attempting unjustly to obtain the property of others, and stated that he had cautioned said Dixion while the sale at which he purchased was pending, that nothing could be sold but the warehouse and the ground upon which it stood, which said Dixion admitted to be true.

2d. Look on the book now shewn to you and marked with the letter B, and state what is its nature, from whose custody it came, what office you hold, under any and what corporation, and by whom said book has been kept hitherto.

Answer. The said book I believe to be the original minute book of the trustees of the town of Alexandria. I first became acquainted with it about the year 1831, when it was left by J. P. Thompson, then clerk of the common council of Alexandria, in the clerk's office of the circuit court for Alexandria county, in my hands, (I being then a deputy in said office) when I so affixed to it the label now upon its cover, which is in these words, "the original minute book of the trustees of the town of Alexandria, left in the clerk's office by the clerk of the common council, and to be taken from the office by no one but him." Said book remained in the said clerk's office until a short time after I

1296.

was elected clerk of the common council in October, 1836, when I took possession of it, and have held possession of it as clerk of council ever since. (Excepted to by complainants' counsel.)

3d. State whether or no the said trustees of the town of Alexandria were the predecessors of any and what existing corporation. State whether or no the said book is a part of the records of your office. State in whose custody the original papers and books of the said trustees are now deposited, and who is entitled to the custody of the same, and where is the proper and usual place of their deposite.

Answer. I have always considered said book as a part of the records of the common council of Alexandria, and it is taken and often consulted as such. I never saw any book or paper of said trustees other than the said book. All the papers and books of the corporation of Alexandria are properly in my office and custody as clerk thereof. I believe the trustees of the town of Alexandria were legally succeeded by "the Mayor and commonalty of the town of Alexandria" by virtue of a charter from the legislature of Virginia, granted before the cession of this part of the District of Columbia, and they again were succeeded by the present corporation, under the name of "the common council of Alexandria," the charter of which was granted by the Congress of the United States after their assumption of jurisdiction over the territory now called the District of Columbia. (Excepted to by complainants' counsel.)

4th. Whether or no has the warehouse at the east end of King street on the south side, and the wharf and property between said warehouse and the river, formerly owned by Thomas Irwin deceased, been assessed to any and what person, aud by whom have the taxes been paid. Whether or no has the corporation of Alexandria ever and when kept in repair any and what portion of the open space between said warehouse and the river?

Answer. The warehouses and wharf property referred to in this question have been assessed since I have been clerk of council in several parts. There are five warehouses in the block, one of which has, during the time of my knowledge, been assessed to Mary Irwin, another to William H. Irwin, another to Thomas Irwin, jr., another to Ann J. Carey, or her husband, and the other, which is now assessed to and owned by complainants, was, until they purchased it, assessed to James Irwin. The wharf has always been described in the assessment as a wharf; and until the sale of James Irwin's interest therein was assessed to . I do not know how the said wharf lot has been kept in repair or by whom; though as auditor, and as such having to audit all corporation expenditures, I have not, to the best of my knowledge and belief, ever paid any bills for such repairs. (Excepted to by complainants' counsel.)

Monday, 6 o'clock, P. M. Further proceeding in taking this deposition is adjourned until to-morrow morning, at 10 o'clock, to be resumed at the mayor's office.

B. HOOE,
JOS. EACHES.

Taking of the deposition of R. Johnston, resumed on Tuesday, 29th April, 1845, in pursuance of adjournment.

1. Cross examined by complainants' counsel. In your answer to the defendant's first question you say that Dixion admitted that he *purchased* nothing but the warehouse and lot of ground it occupies; what farther did said Dixion say in said conversation. Did he or not say any thing in relation to the use of, or access to, the doors and windows, or either, in the eastern front of said warehouse, or what else did he say in said conversation; state all he said.

Answer. In my former answer, I said that Irwin told Dixion in my presence that nothing could be sold but the warehouse and the ground on which it stood, the truth of which Dixion admitted. I remember this particular part of the conversation more clearly, because it was brought to my recollection the same or the next day by Irwin. I do not think he said any thing in said conversation respecting the use of, or access to the said doors and windows, further than may be implied from his said admission. My recollection of the other parts of the conversation is very imperfect. I can state nothing further of said conversation.

2d. Is there any public evidence kept of the yearly assessments of real estate in the town of Alexandria; if so, by whom and in what manner?

Answer. The real estate of the town of Alexandria is annually assessed, usually in the months of March and April, and the books containing such assessments are returned by the assessors to the clerk of the common council, who has the keeping of the same.

3d. Have you, as the clerk of the common council, the said assessment books in your possession, and how many years do they extend back?

Answer. I have, as clerk of the common council, the assessment books in my possession from the year 1817 down to 1844, inclusive.

4th. Are you acquainted with the corner warehouse at the east end and south side of King street, in the town of Alexandria; by whom is the same owned, and how long has it been thus owned?

Answer. I am acquainted with the said warehouse. It is owned by complainants, and has been owned by them about two years.

5th. Is there any building or obstruction between the eastern front of said warehouse and the river Potomac; when, and by whom, was the same, if any, erected; and was there ever any building or obstruction thereon previously?

Answer. There is a small wooden house which binds partly upon the east front of the said warehouse, between it and the river Potomac. It was erected by Philip B. Vernon for William H. Irwin. There was no building there previously, within my recollection; but I recollect, many years ago, a pile of anchors and timber upon the space of ground between the said warehouse and the river; since when I have seen large piles of fire-wood piled upon the said space.

6th. Whether or no were the anchors, timber, and firewood, of which you speak, so piled up as to prevent a passage for persons, carriages, carts, and drays to pass on said space of ground?

Answer. I believe not.

7th. How near to the east front wall of said Dixion's warehouse were the articles, referred to in your answer to the 5th interrogatory, piled up?

Answer. The pile of anchors, &c., was upon the then eastern edge of the said space, and occupied a width of about, I should say, six feet. The piles of firewood occupied much more space; I can't say exactly how much. The width of said space between the warehouse and river is, I believe, more than 40 feet; and an ample passage for carts, &c., would be left, besides the room occupied by the anchors, &c., and firewood, I have mentioned.

8th. Is there any pavement along the eastern front of Dixion's warehouse; what is the extent of such pavement, if any; when, and by whom, was the same made?

Answer. There is a paved foot-walk there, about four feet wide. I do not know by whom it was made.

9th. What person or persons, if any, and how often, have you ever seen pass over said pavement, and the space of ground adjoining and to the east thereof?

Answer. I cannot call to mind many particular persons as having passed over said pavement and ground. I have often passed over them myself.

10th. What number of persons have you ever seen pass over said pavement and space of ground; have you ever seen vehicles, and what kind, and how many, stand upon, and pass over, said space of ground?

Answer. I have seen many persons pass over said pavement and space at different times; I have seen carts, drays, and other vehicles, pass over and stand upon said space.

11th. Was the use of, and passage over of, said space of ground by said persons, carts and drays, and other vehicles, confined to any particular season of the year, or to any specified hours—day or night?

Answer. I believe not.

12th. In what respect did such use of, and passage over, said space of ground differ from the use of, and passage over, a public street?

Answer. I can't say easily in what respects they differed. The foot passengers walked over the said space upon their legs as they would over the streets, and the vehicles passed over it upon wheels, as they generally do over all other ground.

13th. Have you or not ever seen any of those owning said warehouse, previous to complainants, present when the persons and vehicles, above referred to, were passing over said space of ground; and whether or no have such owners attempted to restrain such persons and vehicles from passing over said space of ground?

Answer. I cannot say; never having noticed the passage of persons or vehicles when I was there with any of such owners.

14th. Whether or no was the said space of ground used as a public highway previous to the erection of the wooden house spoken of in your answer to complainants' 5th interrogatory?

Answer. I think not; there are, in my opinion, no public highways in Alexandria, excepting the streets, and such other spaces of ground as may have been laid off by individuals as such by deed.

Examination by defendant resumed.

1. State for what uses and purposes the wharves and wharf property in Alexandria are commonly used; whether or no it could be so used unless access were left open to it?

2. State whether any, and what, use has been made of the wharf property to the east of said warehouse of the Irwins. Whether or no do any and what vessels, packets, or steamboats, stop at said wharf?

1. Answer. The wharves and wharf property in Alexandria are commonly used for shipping to moor at, and to receive, and unlade, their cargoes. I do not think the wharves could be conveniently or profitably used without open access to them.

2. Answer. The wharf property to the east of said warehouses is used for the purposes before mentioned. All kinds of vessels, usually navigating the Potomac river and the sea stop there, and receive and discharge their cargoes and passengers.

3. Whether or no any and what steamboats or vessels, and how many in general, stating as accurately as you can, lie at, and receive, or land goods and passengers on said Irwin's wharf?

4. Whether or no, from the peculiar nature of such property, the number of persons passing over said space is increased or diminished; and whether or no many or few of the persons seen by you passing on said space were, or were not, or might, or might not, have been engaged in business on said wharf?

5. For what privilege is wharfage paid?

3d answer. One of the Washington steamboats lands there, making several trips to and from the same daily, every alternate week; formerly every day; the mail boat to Aquia creek, from Washington, arrives and departs therefrom twice a day. These boats land and receive thereat a great many passengers and considerable merchandise. Sea vessels, and bay and river craft, are continually arriving there, and landing and receiving their cargoes. I can't state the number of them.

4th answer. I believe the commodiousness of such property is materially increased by having ample room for access thereto from the streets, and the number of passengers over the same is increased by the same cause. I have no doubt that many of the persons I have seen passing over the said space of ground, were passing to and from the said wharf on business thereupon, or were going to or from the steamboats.

5th answer. Wharfage is paid for the privilege of landing upon the wharves, and receiving therefrom the cargoes of vessels.

6th. Whether or no would wharf property be available for that purpose to any and what extent, unless the privilege of removing said cargoes was accorded?

6th answer. I do not believe a wharf in Alexandria would be worth

the taxes, unless used for such purpose and possessing such privilege, as I have never heard of passengers paying toll for passing over them.

7th. Whether or no are there any and what publicly acknowledged ways or streets by which communication may be had from the wharves with the streets of Alexandria; and whether or no it is necessary to pass over the said open space in order to reach any other wharf besides Irwin's.

7th answer. All the wharves at the east end of the streets of Alexandria are conveniently accessible from and by the streets; some of those lying between the streets are accessible by alleys laid off by the proprietors of the ground by contract, running to them from Union street; and others by open spaces connecting with the said streets and alleys, and laid off by the proprietors of the ground in like manner. The greater part of the wharves are accessible by spaces of ground left open for that purpose by their owners. It is not necessary to pass over the said open space to reach any wharf in town except Irwin's.

Cross examination by complainants resumed.

1. How many passways are there from Irwin's wharf into the town of Alexandria? Describe them.

Answer. There are two directly communicating with it over the said space of ground, viz., King street on the north, and a wide alley, called Dock street, on the south.

2d. Whether or no do the passengers, arriving and departing in the steamboats which you say stop at Irwin's wharf, pass over said space of ground in front of Dixion's warehouse in entering and leaving the town of Alexandria?

Answer. They do.

Further deponent saith not. R. JOHNSTON.

The further taking of depositions under the commission hereto attached is postponed until Thursday morning next, at 10 o'clock, at the mayor's office in Alexandria. Tuesday, 29th April, 1845, 6 o'clock, P. M.

B. HOOE,
JOS. EACHES,
Commissioners.

Thursday morning, May 1st, 1845. The commissioners again met at the mayor's office pursuant to adjournment, and proceeded in taking depositions in this cause.

Thursday evening, 6 o'clock, May 1st, 1845. This commission is adjourned until Saturday morning next, at the mayor's office, at 10 o'clock, A. M.

JOS. EACHES,
B. HOOE,
Commissioners.

Saturday morning, May 3d, 1845. This commission is again opened at the mayor's office, at 10 o'clock, A. M., according to adjournment, when the taking of depositions in this cause is resumed.

Saturday, May 3d, 1845. Adjourned until Monday next, at 4 o'clock, P. M.

B. HOOE,
JOS. EACHES,
Commissioners.

Monday evening, May 5th, 1845. The commissioners met at the mayor's office, at 4 o'clock, P. M., pursuant to adjournment, and proceeded to take depositions in this case.

Adjourned at 6½ o'clock, P. M., until to-morrow evening at 4 o'clock.

JOS. EACHES,
B. HOOE,
Commissioners.

Taking depositions resumed in pursuance of the above adjournment at the mayor's office, at 4 o'clock, P. M., Tuesday, May 6, 1845.

Adjourned at 6½ o'clock, P. M., until to-morrow evening, at 4 o'clock, at the mayor's office. Tuesday, May 6th, 1845.

JOS. EACHES,
B. HOOE,
Commissioners.

Wednesday evening, May 7, 1845. The commissioners again met pursuant to adjournment, and resumed the examination of witnesses in this case.

Adjourned at 6½ o'clock, P. M., on Wednesday, May 7th, 1845, to meet again on Thursday evening at 4 o'clock, at the mayor's office.

JOSEPH EACHES,
B. HOOE,
Commissioners.

Thursday, May 8. The commissioners again met pursuant to adjournment, at the mayor's office.

Adjourned until to-morrow, (Friday,) at 4 o'clock, at the mayor's office.

B. HOOE,
JOS. EACHES,
Commissioners.

May 8th, 1845.

Friday evening, May 9th, 1845. The commissioners again met at the mayor's office, pursuant to adjournment, and proceeded to take depositions in this cause.

Friday, 6½ o'clock, P. M., May 9th, 1845. Adjourned until to-morrow evening, (Saturday,) to meet again at the mayor's office, at 4 o'clock, P. M.

JOS. EACHES,
B. HOOE,
Commissioners.

Saturday, May 10th, 1845. The commissioners again met at the mayor's office, at 4 o'clock, P. M., pursuant to adjournment, and proceeded in taking depositions in this cause.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Joseph Eaches, Bernard Hooe, and Wm. N. Mills, gentlemen, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection, in diligently examining William Yeaton and others, in behalf of William H. Irwin, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, between George O. and John A. Dixion and said Irwin. We therefore desire you, that at such time and place as you shall appoint, you assemble yourselves together, and the witnesses aforesaid, before you, or any two or more of you, that you call and cause to come, and diligently examine on the Holy Evangelists of Almighty God touching the matter in controversy between the aforesaid parties; and when you have examined them and taken their depositions as aforesaid, that you return the same to our said court, certified under your hands and seals, enclosed together with this writ.

Witness William Cranch, esquire, chief judge of our said court, this 25th day of April, in the year of our Lord 1845.

CASSIUS F. LEE, *C. C.*

To Messrs. George O. Dixion and John A. Dixion.

You will please take notice that on Saturday, the 26th inst., at the office of Joseph Eaches, esq., mayor of Alexandria, between the hour of ten o'clock, A. M., and sunset, and between the same hours on such days thereafter as the commissioners for taking the same shall appoint, until the same shall be completed, I shall proceed to take the depositions of Joseph Nevitt, Joseph Harris, William Yeaton, John Howard, Edward Sheehy, William Bayne, John Douglass, John H. Janney, William N. Mills, George White, Charles C. Smoot, George Howard, Maskell C. Ewing, John Hooff, Thomas Vowell, Robt. H. Miller, George Coryell, Robert T. Ramsay, Phineas Janney, Hugh Smith, Henry Daingerfield, George H. Smoot, Benjamin Waters, Anthony C. Cazenove, William Fowle, Jno. C. Vowell, William N. McVeigh, James Green, Thomas Slatford, Andrew J. Fleming, Robert I. T. Wilson, William A. Harris, Jas. McGuire, and others, to be read in evidence on my behalf in a certain suit in chancery, now pending in the circuit court of the District of Columbia, for Alexandria county, in which suit you are complainants and I am defendant.

WM. H. IRWIN.

ALEXANDRIA, 19*th April*, 1845.

ALEXANDRIA COUNTY, *to wit:*

This day Thomas Slatford came before me, a justice of the peace for the county aforesaid, in said county, and made oath, in due form of law, that on the 19th day of this present month he left a true copy of the within notice at the store of George O. Dixion and John A. Dixion, copartners, in the hands of the said John A. Dixion.

Given under my hand this 24th day of April, 1845.

R. JOHNSTON.

Depositions of witnesses taken by the undersigned commissioners at the mayor's office in Alexandria, by virtue of the authority derived from the annexed commission, and in pursuance of the notice hereto attached, to be read as evidence in a certain chancery suit now depending in the United States circuit court, for the county of Alexandria, in the District of Columbia, wherein George O. Dixion and John A. Dixion are complainants, and William H. Irwin is defendant; the said depositions being taken at the instance of the said defendant, and begun on Saturday, the 26th day of April, 1845.

Deposition of Joseph Harris.

Joseph Harris, a witness of full age, produced and sworn on behalf of the defendant, in answer to the following interrogatories, as follows:

1st. Where do you reside, and how long have you there resided? Were you acquainted with the late Thomas Irwin, and with the property situated at the end of King street, on the south side, and between Union street and the river; and to whom did it belong?

Answer. I live in Alexandria, where I have continued to reside ever since November, 1795; I was acquainted with Thomas Irwin, late of Alexandria, deceased, and know the property described in the above interrogatory. In 1795, I believe, Mr. Irwin did not own that property, but, to the best of my recollection, he (Tho. Irwin) bought it in 1797 when sold at public auction, and I believe to satisfy the default of the then collector of this port.

2. Whether or no have any and what persons, or horses, or carts, and drays, been turned off from any and what lot between the warehouse and the river, and when any, by whom, and in what manner? Whether or no have you ever known any and what person exercise any and what authority over the wharf lot between Irwin's warehouse and the river? Whether or no have you ever known the said lot to be used for commercial purposes, and when, and in what manner, and by whom?

Answer. As to what particular persons have been removed or turned away from the lot in the above question described I cannot say; but I do know that Mr. Irwin, in warm weather, and the summer time, would not permit cartmen and draymen to stand their drays and carts on the said ground, being unwilling to have the ground stamped and trodden into holes; and that he did, under such circumstances, order them away; in the cool weather, and in the winter time, I never knew Mr. Irwin to exercise such authority; I have never known any person exercise any authority over the said wharf lot above described except Mr. Irwin; I have known the said lot to be used by Mr. Irwin for landing goods, and for the transaction of business generally, and by persons coming to the store of Mr. Irwin.

3. Whether or no was any and what person entitled to receive wharfage from vessels lying in the docks adjacent to the said wharf lot; and whether or no had vessels so fastened, and lying and paying wharfage, any and what privilege over any portion of the adjacent wharf lot?

Answer. Mr. Irwin, as the occupier of the said wharf lot, received such wharfages, in person, when he had no clerk employed; vessels lying at and fastened to said wharf had the usual privileges which are granted to vessels similarly situated by the owners of wharves, and I consider them entirely subject to the disposal of Mr. Irwin himself. The privileges referred to above are those of taking in and putting out their freight.

4. How long were you acquainted with said Thomas Irwin, and how long was he owner of the said wharf lot and property; what was the nature and extent of your acquaintance with said Thomas Irwin?

Excepted to by plaintiffs' attorney.

Answer. I knew Mr. Irwin since the year 1795, and for three fourths of the time, until his death, we were on terms of intimate acquaintance. I think he purchased the said wharf lot in 1797, and continued to own it during his life. In 1795 Mr. Irwin occupied said premises, but I think his authority and control were those of agent; and on one occasion, acting in that capacity, he took possession of certain goods, which were then deposited in the warehouse now occupied by Mr. McVeigh, and detained them for the freight; and when that was settled by the owner of the goods they were released by Mr. Irwin.

5th. Whether or no is the said lot to any and what extent perishable property, or originally solid ground; by whom and at whose expense was the said wharf lot kept in repair; if not repaired, what would be its condition?

Answer. No part of the said lot was originally solid ground; I believe it is all perishable; it was always kept in repair by Mr. Irwin, to the best of my knowledge, and if not repaired it would be useless to the owner, and would become a nuisance.

Cross examination of Joseph Harris.

1. In answer to the defendant's first question you speak of Mr. Irwin having driven off cartmen and draymen during warm weather from the lot referred to. Have you or not ever seen merchants or other men of business occupying stores or places of business on the public streets, act in the same manner, under similar circumstances, as you say Mr. Irwin did, or in what manner?

Answer. I do not remember that I have seen other persons act as Mr. Irwin did, in turning or driving off draymen or cartmen from the public streets; they may have done so, but I do not know the fact. Mr. Sam'l Harper did, on one occasion, drive a drayman from the street, near the storehouse he occupied, and used force to remove him; the drayman sued him, and recovered sixty dollars damages, as Mr. Samuel Harper himself told me.

2d. Question by same. Is there any fence, building, or other obstruction, between the eastern front of the lot occupied by Geo. O. & J. A. Dixion; if any, when was the same erected; was there ever any obstruction over the said space of ground previously; how has the ground been used previous to said obstruction, if any?

Answer. There is a small shed, and a portion of a fence, clear of the warehouse of the Messrs. Dixion, on that part of the lot in the above question mentioned. I think that shed and fence were erected some time last fall; I know of no obstruction previously erected on said ground; Mr. Irwin used to put iron, heavy articles, and anchors, I particularly recollect, on said ground; he generally left room for the carts and drays to pass, but occupied all the ground which he considered necessary, so as not to annoy his own business, and as the buildings were not occupied by any person besides himself, he had the entire control of the property in question, on which he piled heaps of lumber and logs whenever occasion required it.

3. Question by same. Was the space of ground referred to ever enclosed previous to the present obstruction; what persons, if any, passed over it, and how often; what use was made of it previous to the said obstruction; were the anchors and logs of wood referred to in your last answer so piled on said lot as to obstruct a passage over it, and every part of it, or what part of it?

Answer. The space of ground here referred to was never enclosed previous to the present obstruction, so far as I know; I have seen thousands of persons pass over the said space, and have crossed it myself times without number; as long as I behaved myself I was privileged to pass over it; but if I picked up a stone and threw it into the river, I warrant that the old man would come out and give me a kick; previous to the present obstruction those grounds were used for the purposes of Mr. Irwin, the owner of the property, and every person else was permitted to pass over the same, provided they behaved themselves; the logs and anchors above referred to as piled up were so placed as to obstruct only the space they occupied; of course they did not interfere with such free passage as was necessary for Mr. Irwin's own business, and for the convenience of other persons who behaved themselves.

4th. Question by same. Was Mr. Irwin or any agent of his, always stationed, day and night, to see and decide whether persons passing and repassing over said ground behaved themselves?

Answer. That I cannot pretend to say. Mr. Irwin was generally there during the day time, except when he went to his meals, and remained there 'til late in the evening.

5th Question. Was the space of ground mentioned ever rented out whilst Mr. Thomas Irwin, senr., owned it?

Answer. I do not recollect that it ever was.

6th. Question by the same. Were there at the time the said obstruction was erected, any doors or windows in the eastern front of the warehouse now occupied by the Messrs. Dixions; if so, describe them.

Answer. At the time the obstruction here referred to was erected, there were two windows and a door below, and several windows and doors in the second and third stories of the warehouse now occupied by the Messrs. Dixion; and in the eastern front, the door in the lower story or opening to the first floor was in the centre, and one window on each side of it.

7th. Question by the same. How did the door or doors you speak of open; on the outer or inner side of the warehouse; and how and in what manner were said door or doors used?

Answer. To the best of my recollection, the doors opened to the outer side; there were no shutters to the windows; the door was used for going in and coming out of the warehouse for the transaction of business.

8th. How, and to what extent, does the obstruction you have mentioned affect the passage and right of way along and in front of Messrs. Dixions' warehouse; is it as free and open now as before said obstruction was erected or otherwise? (Excepted to by defendant's counsel, as suggesting the idea of a "right of way" about which the witness has not said any thing.)

Answer. I am under the impression, if my opinion be taken, that the appearance is more than the obstruction; the passage over said ground certainly cannot be as free and open now as before the said obstruction was erected.

1st. Whether or no has any, and what, change been made in the door and lower windows of the eastern end of the said warehouse by the present owners?

Answer. The position of the north window and of the door, (which was the centre of the eastern front) have been transposed, so as to throw the two windows together, to the south side of the door, which is now where one of the windows was originally.

2d. Can you state whether or no the door opened outward during Thomas Irwin's lifetime, or when, if ever, was the alteration made.

Answer. To the best of my recollection, the door on the eastern front always opened outward. I have no knowledge of any alteration ever being made in the same, until that recently made by the Messrs. Dixion. I have no certain and positive knowledge in relation to the opening of the door; what I have stated is given as my impression, and in that I may be mistaken.

Further this deponent saith not.

JOS. HARRIS.

Deposition of John H. Janney.

John H. Janney, a witness of lawful age, being first duly sworn, in answer to the following interrogatories as follows.

1st. Where do you reside, and how long have you there resided. Were you acquainted with the late Thomas Irwin. Are you acquainted with the warehouse and wharf lot formerly in his possession, at the east end of King street, and on the south side?

Answer. I have lived in Alexandria all my life, and my answer to all the above question is affirmative.

Question 2d. Whether or no has the said wharf lot between the warehouses now owned by the Dixions and Ann J. Carey and the river, ever been encumbered, in any and what manner, and when and by whom? (Excepted to by attorney for complainants.)

Answer. If I understand what is intended by the word "incumbered," I answer, that wood has been piled up there by Mr. Howard, in part of the front of the store which was formerly occupied by Wm. Bayne, and is now unoccupied, which was to the tenant a very serious annoyance and inconvenience. I do not recollect in what year that occurred. In that case the wood was not piled against the house, but left a sufficient space for the passage of a dray or wagon. It was only against a part of the front of the warehouse that the wood was piled up, and I do not undertake to say to what extent.

3. State under whom the said Bayne held the warehouse he then occupied; whether or no was the said Howard, or any other and what person, in possession of the said wharf lot at the time above referred to, and under whom, or under whose authority did he hold said lot.

Answer. William Bayne held the warehouse he occupied under John E. Carey, and John Howard was in possession of the wharf lot at the time referred to, and I understood that he held the same under Wm. H. Irwin.

4th. Whether or no did the said Howard make any and what use of the said wharf lot?

Answer. He used it to put wood and to land goods upon, and for the common purposes of a wharf.

5. Whether or no did any and what dispute arise between the said Bayne and John Carey during said Bayne's occupancy of said Carey's warehouse? If so, state the cause and circumstances of said dispute; whether or no it was referred for settlement to any and what person, and what was the result. (Excepted to by complainants' counsel.)

Answer. A dispute arose between Mr. Bayne and Mr. Carey, at the time above referred to. Mr. Jas. Irwin, as the agent of Mr. Carey, had rented the said property to Bayne. Howard had piled up wood on the open space on part of the front of the warehouse, and Bayne complained of it as a serious annoyance, and required an abatement in the price of the rent; this Mr. Carey did not agree to make to the extent demanded by Bayne, although he admitted the matter of which Bayne complained was an annoyance. Bayne asked that twenty dollars should be deducted from the rent; Carey agreed to abate ten dollars, and to settle their difference; they referred the matter to me for adjustment, and I awarded that Carey should reduce the rent fifteen dollars. Answer also excepted to by complainants. Carey did not deny the right of Howard to pile up his wood as above described.

6. Whether or no have you or any other and what person or persons used any and what portion of the said wharf lot, to land any and what kinds of goods or merchandise on, and when and to what extent?

Answer. Janney's and Irwin's wharves are so located in regard to each other as to form the dock, and when Janney's wharf has been so occupied that access to it has been denied, or when the wharf has been so much crowded with goods, wood, &c., that our boats with corn, meal, and shorts, or such like freight, could not land on Janney's wharf,

it has been found necessary for our mill boat to lay diagonally across the dock formed as herein above described, and in unloading our said boat, to lay planks across from the boat to the head of the dock, and to land our produce there, for which we have paid the usual wharfage without any abatement.

7. Whether or no have you, at any and what time, during the life of Thomas Irwin, deceased, known any and what articles to be piled or to lie on any and what portion of said wharf lot, and for what length of time; and what was the description of any articles lying thereon?

Answer. I can recollect that there was a log lying against the wall of the warehouse, on which persons were accustomed to sit, as it was under the shade of the buildings, and a comfortable seat in warm weather.

8. Whether or no have persons, whose vessels pay wharfage, any and what privileges over, or on the adjacent ground, and for what is said wharfage charged?

Answer It is not usual to charge crafts any dockage, wharfage is charged upon all goods landed on the wharf, of whatever kind the same may be.

9. Whether or no have the said Dixions any and what communication with the public streets of the town without passing over the said wharf lot; and describe the same.

Answer. Yes. They can go through the alley between Janney's block and Irwin's block, so as to give them access to the public streets of the town.

10. On what street of the town is said warehouse situated, and are there or are there not any and what doors or windows opening on said street?

Answer. The said warehouse is situated on King street and the wharf, which last it fronts, and it has two doors or more, besides the windows opening on King street; the said doors have been cut there by the Messrs. Dixion.

Saturday, 4½ o'clock, P. M., April 26th, 1845. At this point of the proceedings under the commission hereto annexed, the further taking of depositions is postponed until Monday morning next, the 28th instant, to be resumed at the mayor's office, at 10 o'clock in the morning.

B. HOOE,
JOS. EACHES.

Monday morning, April 28th, 1845. The further taking of depositions in this case is now resumed, at 10 o'clock, A. M., at the mayor's office, pursuant to adjournment, on Saturday the 26th instant, when the examination of John H. Janney was renewed by the 11th interrogatory on the part of the defendant, William H. Irwin.

11th. Whether or no were there any and how many doors and windows opening on King street when said warehouse was purchased by the Dixions?

Answer. I do not recollect that there were any doors there before the purchase by the Messrs. Dixion; I do not recollect how that was.

Cross examination of John H. Janney.

Question 1, by complainants' counsel. In your answer to defendant's second question, you speak of Howard's having piled wood in front of the warehouse then occupied by Bayne. When was the wood alluded to so piled up; how long did the same remain; and was any portion of it piled in front of the warehouse occupied by the Messrs. Dixions?

Answer. The piling of the wood referred to in this question was some few years ago; in what particular year I cannot say. It was piled up on part of the front of the store occupied by Bayne; so as to incommode him very seriously; it so remained for some time, on one occasion, but how long, I cannot recollect. No portion of the said wood was piled up in front of the store then occupied by Howard, now the Dixion's property, so far as I can remember. Howard then rented the warehouse and the wharf property from Mr. Irwin; at least I understood so; and being his own store, he did not wish to incommode himself by so piling up the wood in front of his store.

Question 2d. Was the passage for persons and vehicles over the space of ground in front of said Dixion's warehouse, obstructed by the wood when piled up above as referred to?

Answer. No.

Question 3. How many years have you known the said warehouse property owned by the Dixions; is there any obstruction between the eastern front of said warehouse and the river Potomac; if so, when was the same erected; describe it; was there ever any obstruction previous to that now on the said space of ground; if so, describe it; when and by whom was the same, if any, erected?

Answer. I have known the said property twenty or twenty-five years; there is a sort of a pen built there, which has been there for several months. In further answer to this question, I can only state what I have said before, in regard to the piling up of wood to the annoyance of Mr. Bayne; how far it extended, I cannot more particularly describe.

Question 4th. Did the wood piled by Howard cover any portion of the ground now covered by the pen mentioned in your last answer.

Answer. I do not recollect distinctly about that.

Question 5th. In what manner was the ground adjoining and between the eastern front of Dixion's said warehouse and the river Potomac used previous to the erection of the obstruction alluded to?

Answer. I do not know as to the space occupied now by the pen, or obstruction, further than I have already stated in regard to the piling up of wood by Mr. Howard; it was, I believe, used as other grounds are about the wharves; the wood was so piled up by Howard as to prevent a wagon from backing up to Bayne's store.

Question 6. Was the space of ground specified in the last preceding question ever enclosed, before the erection of the pen of which you have spoken; was there ever any building, fence, or permanent obstruc-

tion on it; did any person or persons ever pass over said space of ground; did any carts, carriages, drays, or horses, ever pass over said ground; if so, how often? (Excepted to by defendant's counsel.)

Answer. That particular space of ground was never so enclosed, nor obstructed by any fence or other building of like kind, so far as I remember. I do not recollect any former obstruction there, except that occasioned by the wood piled up by Howard; there was never before any permanent obstruction, that I remember; persons and drays, carts and carriages, passed over said ground whenever they chose to do so.

The cross examination of John H. Janney is now suspended for his accommodation, in going to Washington on important business.

Mayor's office, Monday, April 28th, 1845.

B. HOOE,
JOS. EACHES,
Commissioners.

The farther proceeding in taking depositions under the commission hereto annexed, is postponed until Thursday morning next, at 10 o'clock, at the mayor's office in Alexandria, 'til when this commission stands adjourned. Tuesday, April 29th, 1845, 6 o'clock, P. M.

B. HOOE,
JOS. EACHES,
Commissioners.

Thursday morning, May 1, 1845. The commissioners again met at the mayor's office, pursuant to adjournment, and proceeded with the examination of witnesses in this cause.

Thursday, May 1, 1845. Further proceedings under the commission in this case are adjourned until Saturday morning next, at 10 o'clock.

B. HOOE,
JOS. EACHES,
Commissioners.

Saturday morning, May 3d, 1845. The commissioners again met according to adjournment, and resumed the taking of depositions in this case at the mayor's office, at 10 o'clock in the morning.

Saturday, May 3d, 1845. Further proceedings adjourned, until 4 o'clock, P. M., on Monday next.

B. HOOE,
JOS. EACHES,
Commissioners.

Monday, May 5th, 1845. The commissioners met pursuant to adjournment, at the mayor's office, at 4 o'clock, P. M., and proceeded to take depositions in this case.

Adjourned until to-morrow evening at 4 o'clock.

JOS. EACHES,
B. HOOE,
Commissioners.

Tuesday, May 6th, 1845. The commissioners met pursuant to adjournment, at the mayor's office, at 4 o'clock, P. M., and proceeded to take depositions in this case.

Adjourned until Wednesday evening, at 4 o'clock, P. M.

B. HOOE,
JOS. EACHES,
Commissioners.

Wednesday, May 7th, 1845. The commissioners met pursuant to adjournment, at the mayor's office, at 4 o'clock, P. M., and proceeded to take depositions in this case.

Adjourned until Thursday evening, at 4 o'clock, P. M.

B. HOOE,
JOS. EACHES,
Commissioners.

Thursday, May 8th, 1845. The commissioners met pursuant to adjournment, at the mayor's office, at 4 o'clock, P. M., and proceeded to take depositions in this case.

Adjourned until Friday evening, at 4 o'clock, P. M.

B. HOOE,
JOS. EACHES,
Commissioners.

Friday, May 9th, 1845. The commissioners met pursuant to adjournment, at the mayor's office, at 4 o'clock, P. M., and proceeded to take depositions in this case.

Adjourned until Saturday evening, at 4 o'clock, P. M.

B. HOOE,
JOS. EACHES,
Commissioners.

Saturday, May 10th, 1845. The commissioners met pursuant to adjournment, at the mayor's office, at 4 o'clock, P. M., and proceeded to take depositions in this case; and at 6½ o'clock, P. M., of the same day, closed the commissioners in this case.

B. HOOE,
JOS. EACHES,
Commissioners.

Deposition of R. I. T. Wilson.

Robert I. T. Wilson, a witness produced and sworn in behalf of the defendant, answers to the following interrogatories as follows:

1. Where do you reside, and how long have you resided? Were you acquainted with the late Thomas Irwin; and are you acquainted with the warehouse and wharf property at the east end of King street, on the south side, from Union street to the river?

Answer. I live now in Fairfax county, in Virginia, where I have lived for twelve or fourteen years. I was very well acquainted with old Mr. Irwin; and am also acquainted with the warehouse and wharf property in the above question referred to.

2. Whether or no has the open space between the eastern side of said block of warehouses and the river Potomac been at any time, and how long, in the occupancy of any and what person or persons; and whether or no it, or any part, and what part of it, has been used by any and what person, and for any and what purposes?

Answer. Until the Messrs. Dixions's occupancy of the said property, it has always been, as far as I can recollect, in the occupancy of the Irwin family. I knew old Mr. Irwin to occupy it. When tenants have been in that block of buildings, they used to get the privilege of occupying it from the Irwins. I never knew the open space, here mentioned, to be used for any other purpose except to place lumber, and goods, and wood on it. I have so used it myself when I occupied one of the buildings in said block.

3. Whether or no did you ever, and when, reside in the town of Alexandria; whether or no were you engaged in any and what business; where was your place of business; and whether the place of business belonged to you, or was rented, and from whom?

Answer. I lived in Alexandria, as my place of business, in the years 1830, 1831, and the early part of 1832; and had also done business at an earlier day than 1830; my family then being in the country, and near to town; my business was that of grocer, and my place of business was in the house now occupied by the complainants in this suit; and I was the tenant of the Messrs. Irwin, from whom I rented the property.

4. Whether or no did you, or any other, and what person or persons, make any use of the open space, or any and what part of it, between said warehouse and the head of the dock; and by whose authority, or by whose permission?

Answer. I can only answer for myself; I used the said open space by permission of the two Messrs. Irwin.

5th. State what use you made of the said open space.

Answer. To land wood, to put empty boxes, hogsheads, and to land grain, and merchandise, and lumber, &c.; to land or deposite all kinds of stuff, which I did by permission of those friends of mine, who used to give me the privilege to do so.

6. Can you state how far you have ever piled the wood or lumber, of which you speak, from the head of the dock towards the house?

Answer. I have piled wood, lumber, &c., about half-way between the head of the dock and the houses, leaving a gangway for myself and others to pass; the wood, &c., so piled up, did not long remain there at a time.

7. Whether or no did any, and what person or persons, claim and exercise authority over the said open space; and in what manner?

Answer. I can only answer for the time I lived there; during that time the Messrs. Irwin (by whom I mean here, and wherever else I speak of them, Messrs. James and Wm. H. Irwin,) exercised alone the authority and control over those premises.

8. Whether or no have you ever, and when, known any and what carts or drays driven off the said open space, and by whom?

Tuesday, May 6th, 1845. The commissioners met pursuant to adjournment, at the mayor's office, at 4 o'clock, P. M., and proceeded to take depositions in this case.

Adjourned until Wednesday evening, at 4 o'clock, P. M.

B. HOOE,
JOS. EACHES,
Commissioners.

Wednesday, May 7th, 1845. The commissioners met pursuant to adjournment, at the mayor's office, at 4 o'clock, P. M., and proceeded to take depositions in this case.

Adjourned until Thursday evening, at 4 o'clock, P. M.

B. HOOE,
JOS. EACHES,
Commissioners.

Thursday, May 8th, 1845. The commissioners met pursuant to adjournment, at the mayor's office, at 4 o'clock, P. M., and proceeded to take depositions in this case.

Adjourned until Friday evening, at 4 o'clock, P. M.

B. HOOE,
JOS. EACHES,
Commissioners.

Friday, May 9th, 1845. The commissioners met pursuant to adjournment, at the mayor's office, at 4 o'clock, P. M., and proceeded to take depositions in this case.

Adjourned until Saturday evening, at 4 o'clock, P. M.

B. HOOE,
JOS. EACHES,
Commissioners.

Saturday, May 10th, 1845. The commissioners met pursuant to adjournment, at the mayor's office, at 4 o'clock, P. M., and proceeded to take depositions in this case; and at 6½ o'clock, P. M., of the same day, closed the commissioners in this case.

B. HOOE,
JOS. EACHES,
Commissioners.

Deposition of R. I. T. Wilson.

Robert I. T. Wilson, a witness produced and sworn in behalf of the defendant, answers to the following interrogatories as follows:

1. Where do you reside, and how long have you resided? Were you acquainted with the late Thomas Irwin; and are you acquainted with the warehouse and wharf property at the east end of King street, on the south side, from Union street to the river?

Answer. I live now in Fairfax county, in Virginia, where I have lived for twelve or fourteen years. I was very well acquainted with old Mr. Irwin; and am also acquainted with the warehouse and wharf property in the above question referred to.

2. Whether or no has the open space between the eastern side of said block of warehouses and the river Potomac been at any time, and how long, in the occupancy of any and what person or persons; and whether or no it, or any part, and what part of it, has been used by any and what person, and for any and what purposes?

Answer. Until the Messrs. Dixions's occupancy of the said property, it has always been, as far as I can recollect, in the occupancy of the Irwin family. I knew old Mr. Irwin to occupy it. When tenants have been in that block of buildings, they used to get the privilege of occupying it from the Irwins. I never knew the open space, here mentioned, to be used for any other purpose except to place lumber, and goods, and wood on it. I have so used it myself when I occupied one of the buildings in said block.

3. Whether or no did you ever, and when, reside in the town of Alexandria; whether or no were you engaged in any and what business; where was your place of business; and whether the place of business belonged to you, or was rented, and from whom?

Answer. I lived in Alexandria, as my place of business, in the years 1830, 1831, and the early part of 1832; and had also done business at an earlier day than 1830; my family then being in the country, and near to town; my business was that of grocer, and my place of business was in the house now occupied by the complainants in this suit; and I was the tenant of the Messrs. Irwin, from whom I rented the property.

4. Whether or no did you, or any other, and what person or persons, make any use of the open space, or any and what part of it, between said warehouse and the head of the dock; and by whose authority, or by whose permission?

Answer. I can only answer for myself; I used the said open space by permission of the two Messrs. Irwin.

5th. State what use you made of the said open space.

Answer. To land wood, to put empty boxes, hogsheads, and to land grain, and merchandise, and lumber, &c.; to land or deposite all kinds of stuff, which I did by permission of those friends of mine, who used to give me the privilege to do so.

6. Can you state how far you have ever piled the wood or lumber, of which you speak, from the head of the dock towards the house?

Answer. I have piled wood, lumber, &c., about half-way between the head of the dock and the houses, leaving a gangway for myself and others to pass; the wood, &c., so piled up, did not long remain there at a time.

7. Whether or no did any, and what person or persons, claim and exercise authority over the said open space; and in what manner?

Answer. I can only answer for the time I lived there; during that time the Messrs. Irwin (by whom I mean here, and wherever else I speak of them, Messrs. James and Wm. H. Irwin,) exercised alone the authority and control over those premises.

8. Whether or no have you ever, and when, known any and what carts or drays driven off the said open space, and by whom?

(Excepted to by complainants' counsel.)

Answer. When I lived there the Messrs. Irwin frequently drove dissipated noisy people who disturbed the peace, draymen and others, from that ground, claiming it as their own property, with which they had the right to do as they pleased.

9. Whether or no was any person, and who, entitled to wharfage for the merchandise, or wood, or lumber so piled on or over the said open space; and whether or no did you ever pay wharfage to any person, and to whom, and in return for what right or privilege, on the said open space?

Answer. I do not know who was entitled to the said wharfage, but the Messrs. Irwin collected it; I paid to them rent or wharfage, or whatever it may be called, for the use of that open space, so long as I occupied it.

10. By whom was the said open space kept in repair?

Answer. By the Messrs. Irwin whilst I lived there, and by their father in his lifetime; I recollect that.

11. Can you state whether the door in the east end of said warehouse opened outwards or inwards; whether or no it was ever, and when, and by whom changed?

Answer. My impression is that it opened inwards when I lived there; I think it has been changed, but by whom I do not recollect; after I left there I think it opened outward.

Cross examination of R. I. T. Wilson, by complainants' counsel.

1st. How did the said Dixions' warehouse front?

Answer. It fronts on one side to King street, and on the east to the Potomac river.

2d. Were there at the time you occupied said warehouse, or before or since, any door in the lower story of said house; if so, how many in each front, and thro' which door was the business transacted?

Answer. At that time there were two doors, one opening upon King street, and the other to the wharf; I transacted business thro' them both.

3d. Which was then used as the front of the warehouse in transacting business, and thro' which of the doors was most business done?

Answer. I did business thro' both doors, but the most business was transacted thro' the eastern door; I used that mostly.

4th. Question by same. Whether or no was there at the time you occupied said warehouse, or before or since, any pavement adjoining and between its eastern front wall and the Potomac river? If so, state when and by whom the same was made; and describe of what it is made, and its extent.

Answer. I think there was a small brick pavement on the eastern front adjoining the warehouse wall, and extended out four or five feet eastward; I do not know when nor by whom it was made; there was a small shed over the door.

5th. Question by same. What person or persons, if any, ever passed over the ground between the eastern front of said warehouse and the

Potomac river; name such persons, and the time or times, and how often, if ever, any such person or persons passed over said ground.

Answer. I have seen hundreds of persons pass over the said ground, and if I were to go on naming such as I have seen pass there, I should keep you writing all the day long.

6. Question by the same. In what manner and for what purposes did such person or persons pass over said ground?

Answer. Some passed on horseback, some with drays, and some in a carriage; all I presume, on their own business.

7th. Question by same. Whether or no did such person or persons, referred in your last answer, with their said drays and carriages, stand and remain on said open ground? If so, for what space of time; in what respect did the passage of such person or persons over said ground differ from such passage over a public street?

Answer. The drays and carts would stop there for a considerable time looking for business, the drays in particular; when persons on such ground made a fuss or a noise, Mr. Irwin would go out and make them move, saying it was his property, and he would not let them stay there.

8th. Question by same. Did either of the Messrs. Irwin referred to, or yourself as their tenant, ever attempt to drive persons from said ground, or to restrain the person or persons above referred to in standing upon or passing over said ground, except the noisy and drunken persons you have spoken of?

(Excepted to by defendant's counsel.)

Answer. None, except such as were in the way in passing from the warehouses to the wharf; they would drive them off then.

9th. What is the distance between the eastern front of said Dixion's warehouse and the ground on which, in your answer to the defendant's 5th interrogatory, you say you were in the habit of piling wood, lumber, &c?

Answer. Fifteen or twenty feet, I suppose.

10th. Question by same. Did you or not, whilst tenant, ever obstruct or close up this intervening space?

(Excepted to by defendant's attorney.)

Answer. I never closed it up.

11. Is there now any obstruction between the eastern front of said Dixion's warehouse and the Potomac river?

Answer. The small frame house there is all I see. (This answer excepted to by defendant's counsel.)

12th. When was the said obstruction erected, and whether or no was there ever any obstruction over said ground prior thereto?

Answer. I live in the country, and do not know exactly when it was erected, but I think it was some time in the last year, or the year before; I have seen during the lifetime of old Mr. Irwin large logs of timber lying about those warehouses.

13th. Did you or not ever see the passage over the ground in front of Dixion's warehouse so obstructed that the public, with horses, carriages, carts, or drays, were obstructed in passing in front thereof?

Answer. I never did.

14th. Were either of the Messrs. Irwins ever present whilst the person or persons referred to in your answer to the complainants' 5th interrogatory were passing over said ground; and did they, or either of them, attempt to prevent the same, with the exceptions you have mentioned?

Answer. They were present, and never did attempt to stop persons passing over said ground.

Defendant's examination resumed.

1. You speak of a gangway being left by you between the wood piled up and the house; state by whose direction such gangway was left; whether or no had it not been left there, would there have been any, and what, direct access to Irwin's wharf from King street; and if access to said wharf from said street had been cut off, how would it have affected the value and use of said wharf?

Answer. I left the said gangway of my own accord, without directions from any person; if it had not been so left, there would have been no direct access to King street; if access had been cut off as here indicated, the value and use of said wharf would have been affected materially, I should say.

2. Whether or no was the said wharf in much requisition; did any and what boats, packets, or steamboats, stop at said wharf; and were or were not any, and how many persons obliged to pass over said open space or through said gangway to reach said boats, &c?

(Excepted to by complainant.)

Answer. The said wharf was in much requisition; I cannot particularly say what boats, &c., stopped at the same, but there was scarcely a day that there were not boats and vessels stopping there; to reach the said boats or vessels, persons could either pass through the gangway above mentioned, or through the alley to the south of Mr. Carey, and between his warehouse and Janney's block.

3. Whether or no did the said Thomas Irwin, deceased, at any, and what time, give up or abandon his right over the said open space to the public; whether or no was there any street covering the said lot; whether or no was his claim to said property known, and to whom in general; and was or was not said claim limited to any and what part of said open space? (This question excepted to by complainants' counsel.)

Answer. I never heard, and do not know, that Thomas Irwin, deceased, ever abandoned his said right to the public; there was no street covering said lot that I ever heard of; his claim to said property was known to every body in Alexandria; as far as I know, his claim was not limited, but covered all the space from Union street down to the water.

4th. Whether or no did the persons who passed over said open space, so pass when it interfered with the business of said Irwin?

(Excepted to by complainants' counsel.)

5. Can you estimate what proportion of the persons so passing over

said open space, did so in consequence of having business transactions with said Irwin, or on said Irwin's wharf?

6. Did the Messrs. Irwins, when they saw persons passing over said space, refrain from preventing such passage, because they admitted the right of such persons so to pass, or because such passage did not incommode them, or for any other and what reason in particular?

4. Answer. I never saw any persons pass over said open space when it interfered with his business; it did not interfere with his business as they passed along.

Answer to 5th interrogatory. I can form no such estimate.

Answer to 6th interrogatory. I never saw them restrain any persons from passing over, except such as made a noise or disturbance on the ground which they claimed as being their property.

7. Whether or no does the obstruction mentioned as being on said ground in your 11th answer, obstruct the passage of drays and carts along the said wharf?

Answer. It does partially obstruct it.

What I mean is, does it or not prevent carts from passing from north to south, from King street to the warehouse, and the river?

Answer. It does not obstruct carts in passing from King street to the south. Further this deponent saith not.

R. I. T. WILSON.

Further proceedings under the annexed commission adjourned until to-morrow morning at ten o'clock, at the mayor's office, in Alexandria.

Monday, April 28th, 1845, 6 o'clock, P. M.

B. HOOE,
JOS. EACHES.

Deposition of Joseph Nevitt.

Tuesday morning, April 29th, 1845. The farther taking of depositions in this case is this day resumed, at 10 o'clock in the morning, at the mayor's office, pursuant to adjournment, when Joseph Nevitt, a witness of full age, introduced by the defendant, being duly sworn, deposeth and says as follows, viz:

1. State where you live, and how long you have lived there; how long you have been acquainted with Alexandria; whether at any time, and when, you were engaged in any and what business in said town; and in what part of said town your business particularly called you; whether or no you were acquainted with the block of warehouses and wharf property at the south side and east end of King street, and to whom it belonged.

Answer. I reside in the town of Alexandria, where I have lived about fifty years; during the greater part of my life I have been engaged in said town in the "packet" and steamboat business, which has generally called me about the wharves, (being packet and steamboat master.) I am acquainted with the property described in the above question; when I first knew it, I think it belonged to Col. Fitzgerald,

or perhaps to his creditors; afterwards, as I understood, to Irwin and Dunlap; and more recently to Thomas Irwin, now deceased.

2d. Whether or no has any, and what use been made of the wharf property between the eastern end of said block of warehouses, and the wharf pier and docks; and by whom it has been used?

Answer. It has been used for common purposes, such as the owners have seen fit. I have never known any difference as to the vacant grounds at all.

3d. State in particular in what way the said open space between the warehouse and the river has been used, and for what purposes.

Answer. It has been used for various purposes; wood and logs have been piled on it, cargoes landed on it, and drays have passed on it.

4. State on what part or parts of said space the articles above referred to were placed or piled; by whom, or by whose authority they were so placed.

Answer. Things have been put there by different persons at different times. I was, myself, at one time, agent for the wharf for a few years after the death of Thomas Irwin, sen., and before Mr. Howard rented it; and at that time, and before, cargoes were landed on it by the permission of the owners. Mr. Howard landed wood on it; Mr. Irwin in his lifetime, used to pile things up there so as to be out of his way; he piled up anchors, some of them weighing from 1600 to 2,000 pounds, which he kept there for a considerable time, and afterwards sold them to the Government; he put things there at his own discretion, using any part of the ground he chose, as I presume; I viewed it in that way.

5. Whether or no did the mode in which said wharf lot was used, differ in any and in what respects from that in which the wharf pier was used?

Answer. As far as my knowledge extends, they were all used for the same purposes. As I remarked before, there was no division in the lots that I know of.

6th. Whether or no did any and what person or persons receive wharfage from said wharf lot; and if so, for what was said wharfage paid, and to whom?

Answer. That is a question I find it difficult to answer. I know that, when I was acting as agent, I received wharfage on grain and wood landed there; and when I was engaged running packets, I paid Mr. Irwin a great deal of wharfage on the wharf, different parts of it, I do not undertake to state particularly; and during my agency, wood and grain, and various things were allowed by me to be landed at the head of the slip. When I first commenced the packet business, the wharf was much smaller than at present; there was then but a single pier, and the water was so deep as to enable the packets to lay with the bowsprit full up King street, resting on the logs, jutting over them into the street; it was the interest of Mr. Irwin, and he made it his business, to keep the dock and the water in better order than it has been since. The corporation, as I understood, permitted persons to use the docks, pro-

vided they would keep them in order, so as to protect the corporation from any expense for the same. The wharf was not then as large as it is at present, and we used every part of the vacant ground without restriction; it was not all entirely occupied or covered, because if that had been done, there would have been no opportunity or means of getting to the wharf to remove the goods, &c., therefrom.

7. Whether or no has any person, and who, claimed and exercised authority over any and what portion of said wharf lot and property?

Answer. I never knew any one, except old Mr. Irwin and his heirs, since the dissolution of the partnership of Irwin and Dunlap, except Mr. Howard, who leased the property for several years.

8. Whether or no was the said property generally considered to belong to any person; and to whom was it considered to belong?

(Excepted to by complainants' counsel.)

Answer. Since the dissolution of the partnership of Irwin and Dunlap, as far as I know, the property was considered as belonging to Mr. Irwin and his heirs.

9. Whether or no have you ever known any persons, or carts, or drays, turned off, or driven from, said lot, or any part of it; and when, and by whom, and by whose authority?

(Excepted to by complainants' counsel.)

Answer. In the lifetime of old Mr. Irwin, I have known him to drive off persons with their drays or carts from that space in summer evenings, when the shade of the houses was cast over the ground; Mr. Irwin had some logs piled there, which were called the old gentleman's settees, where persons would go and sit and converse with him. Horses standing there with drays or carts stamped the ground into holes; and, in fly time, created a great annoyance; and I have known Mr. Irwin to take a whip from some of those near him, and go and drive off some half dozen of the carts or drays; and, if the drivers grumbled at it, he would tell them to go and stand on the Corporation grounds, for which they paid taxes; that they paid none for standing on the space from which he drove them. To see the old gentleman so particular, made an impression on my mind at the time.

10. How often do you recollect to have seen carts or drays driven off; state generally, as near as you can.

Answer. It is impossible for me to say. I have seen it frequently done, and in different years, in the warm weather of summer. Mr. Irwin and I were concerned, for some time before his death, as joint owners of vessels, and indeed when he died we were jointly concerned in a vessel; and consequently, when I was not otherwise occupied in business, I spent the most of my time about the wharf.

11. By whom, and at whose expense, has the said wharf been kept in repair; what is the nature of the ground, and the mode of its construction?

Answer. I knew of no person except the owners of it; when I first knew the ground it was in ruins, the tide flowing over most of it; the wharf was afterwards built up by Irwin and Dunlap; and I should say that the whole of said lot was mostly made ground.

12. Can you state whether or no the said wharf lot, for any and what reasons, is in any and what extent liable to require repairs; and, if not repaired for a series of years, what would be its condition?

Answer. The whole of it, I suppose, is liable to decay; and, if not repaired, would go to ruin, I presume, in time. All parts of it have been repaired various times since my recollection; wharf logs, &c.

Cross examination of Joseph Nevitt.

1. Question by complainants' counsel. Who owns the warehouse on the south side and east end of King street, in Alexandria; and how long has it been so owned?

Answer. I was not present when it was sold, and have not seen the deed for it; Messrs. Dixion occupy it; and, I believe, they are the owners; but how long, I do not recollect.

2. Question by same. Were there, during the ownership of Thomas Irwin, deceased, or his heirs, any doors or windows in the lower story of said warehouse; if any, describe them?

Answer. There was one door, and two windows, on the ground floor of the eastern end of the building; and, on the second floor, there was the same arrangement, and two windows in the gable end.

3. Question by same. How high above the surface of the earth was the lower frames of the said door and windows in the eastern end of said warehouse?

Answer. It is impossible for me to say. I always considered them too low, as the door especially is so near to the ground as to admit the tide flowing into it.

4. Which was used as front of said warehouse; what business was conducted in it during the period above mentioned; and through which door was the business of said house carried on?

Answer. The east end was generally used as the front of said warehouse; I do not know that there was any door on the side of it next to King street; when old Mr. Irwin used the said building it was employed as a storehouse for goods brought here on packets, and for storing other things generally, and flour, when not occupied by tenants; the warehouse was sometimes used by tenants in the regular course of their business, of whom Tho. West Peyton occurs to my mind. I always thought his object in building those houses was for the convenience of his tenants, and the improvement of the wharf property, and especially as a prop to the large stone building to the west of them, which leaned or inclined towards the east.

Explanation to the answer given to the 4th cross interrogatory of the complainants.

In answer to the 4th interrogatory, on the cross examination of Joseph Nevitt, he stated, on Tuesday, the 29th April, 1845, "I do not know that there was any door the side of it (meaning Dixion's warehouse,) next to King street."

On this day, (Saturday, May 3, 1845,) Joseph Nevitt comes again

before the commissioners, and states that he was in error on his examination above referred to; that, on reflection, he is satisfied that his statement then made was erroneous, and asks to correct the same; which, being assented to, is accordingly done; and now answers to that part of the said 4th interrogatory on his said cross examination, he says: "I recollect there was a door on the side of said (Dixion's) warehouse, next to King street; for I remember that, on more than one occasion, I have used that door in storing goods there, and taking them out; and one occasion of taking out from thence some tobacco to be sent to Baltimore."

5. Question by same. Was there, during the ownership and occupancy by Thomas Irwin, deceased, or his heirs, or of his or their tenants, any obstruction preventing an entrance into the doors, or either of them, in the said eastern front of said warehouse from the outer side thereof, or preventing or interrupting the entrance of air or light through the windows in said eastern front, or either of them? If so, describe it.

Answer. None that I know of. Mr. Bayne occupied the south house now owned by Carey; and Howard piled up wood on so much of the ground as to create a great annoyance to Mr. Bayne, who complained of it to Howard, when he replied that he had rented the whole property and must make the most of it. Howard's wood was not piled against the wall, but occupied so much space as to prevent carts and drays from getting up, and so interfered with Bayne's business as to cause him to leave the property.

6. Since Thomas Irwin and his heirs have ceased to own said Dixion's warehouse, has any obstruction been erected between its eastern front wall and the river Potomac? If so, when and by whom was the same erected? Describe it particularly, and what is its effect on the use and value of said Dixion's warehouse.

Answer. Some time during the last fall an obstruction was erected between the eastern wall of the said warehouse and the Potomac river. It consisted of a pen, constructed there by Wm. H. Irwin, or by his order, and a part of it was afterwards converted into a shantee, by John Howard, who used it as a kind of compting room, where he is engaged in the wood business. He piled up wood also in front of the said warehouse, and said as he had rented the ground he must make the most of it he could. I suppose that Mr. Howard, by the permission of Mr. Irwin, removed the pen and converted [it] into a shantee as above stated, but I do not know any thing positive about it. As to the effect such obstruction has on the use and value of Dixion's warehouse I am unable to speak, not being acquainted with such things; but it can have no good effect I presume.

The further proceedings under this commission, hereto annexed, is postponed until Thursday morning next, at 10 o'clock, at the mayor's office in Alexandria. Tuesday, April 29, 1845, 6 o'clock, P. M.

B. HOOE,
JOS. EACHES,
Commissioners.

Thursday morning, May 1st, 1845. The commissioners again met at the mayor's office, pursuant to adjournment, and proceeded in the further examination of Joseph Nevitt, whose examination was suspended by the adjournment on Tuesday evening last.

7. Question. Is the passway over the space of ground in front of the eastern wall of Dixion's said warehouse, and between it and the river Potomac, affected in any manner; and what, by said obstruction, and to what extent? Was the ground on which said obstruction stands travelled over, stood upon, and used previous to the erection of said obstruction? If so, by whom, and how many, and when; did any vehicles, and what kind, if any, ever stand upon, or pass over said space of ground; when, and how often?

(This question excepted to by the defendant's counsel.)

Answer. The open space here spoken of is certainly affected by the said obstruction, but to what extent I am unable to say, not being acquainted with such things. That space of ground has been used by the public, as all other vacant ground has been, as far as I have observed. I never viewed it as a street. By the term vacant ground, I mean to say open lots, not those enclosed by fences. I have seen all kinds of vehicles, carts, drays, and wagons, and carriages pass there occasionally, as a matter of convenience I presume.

8. In what respect, if any, did the passage and standing upon said ground by the said public and vehicles, differ from the passage over, and standing upon the public streets by said public and vehicles?

Answer. I do not know of any myself; they were in the habit of standing there occasionally waiting for business, and were sometimes an annoyance to the owners.

9. During what season or seasons of the year, month, day, and hour, have said public and vehicles passed over, and stood upon said space of ground? Was the number of the persons and vehicles thus passing over, and standing upon said space of ground, large or small?

Answer. At all seasons of the year, and at any and all times of the week, I have seen many persons and vehicles passing over, and standing upon said space; I have never been so particular as to note down, or take any account of the number of persons passing over, or standing thereupon; I have seen those things when my business has called me to that part of the town occasionally.

10. Do any steamboats, and how many, and how often, stop at Irwin's said wharf?

Answer. There are two steamboats stopping there daily; one plying between Washington and this place, makes four or five trips daily; and the mail boat touches at that wharf twice a day; the boat which runs between Washington and Alexandria, runs in each alternate week, and in the week when she is not on the route she lies at said wharf.

11. Over what ground do the persons and freight arriving and departing on said boats, or any of them, pass in entering and leaving the town of Alexandria; over what ground is the public mail conveyed to and from said town to said mail boat; what is the distance from the

eastern front of said Dixions' warehouse to the east end of Irwin's; what at the river Potomac?

Answer. Persons and freight arriving at and departing from Alexandria on the said boats pass by three different ways or routes, either by Dock street, as it is called, over the space between the eastern front of Dixions' warehouse and the river, or down the river, southward, towards Prince street, on the east front of the stores, most of which have two fronts. The public mail is carried thro' Dock street to the steam mail boat at Irwin's wharf. I do not know the distance from the eastern front of said Dixions' warehouse to the east end of Irwin's wharf. I pass thro' Dock street in carrying the mail to the steamboat, because it conveys me more directly to my point of destination; it is my most convenient route.

12. In your answer to defendant's 4th interrogatory you speak of Thomas Irwin, deceased, having piled up anchors on said wharf; were they so piled up as to obstruct a passage for persons and vehicles over the space of ground in front of said Dixions' warehouse; when did said Thomas Irwin die, and how long previous to his death did he sell said anchors to the Government?

Answer. It has been so long ago that I cannot say how long previous to the death of said Thomas Irwin he sold the said anchors to the Government. He did not pile up the said anchors in such way as to obstruct the passage for persons and vehicles; to have done so would have been against his own interest. I never had a doubt as to his right to have stopped it up if he had chosen to do so, and if it had been to his interest, I have not a doubt but that he would have stopped it up; that is my impression. There was no one then to dispute his right that I know of.

13. Whether or no was there, prior to or since the death of Thomas Irwin, any fence, bar, gate, or building, over said space of ground to the eastern front of said Dixions' warehouse, and that portion of it covered by said obstruction; was any such fence, bar, gate, or building, if any, or any portion of such, built, fixed, or planted in said ground, or any portion thereof?

Answer. I know of none. I do not remember to have seen any such planted or placed there, nor have I ever heard of any. I was not always in town, but was half my time away. I think I did, in substance, answer this last question before, when I said that Mr. Irwin had put no such obstruction there, as to have done so would have interfered with his own convenience.

Examination by defendant resumed.

1. State whether or no by any person's permission, by whose permission or authority, the said steamboats and mailboat stop at said wharf and send their freight and passengers across said wharf property; whether or no any wharfage is paid for such privilege, and how much, and to whom; and whether or no you have ever, and when, collected wharfage on said wharf property, and when, and for whom?

Answer. When I was agent for the said wharf property, James Irwin, as one of the owners, employed me, and by his permission the said boats stopped at said wharf, and sent their freight and passengers across said property. The steamboats pay a charge of wharfage or dockage for the privilege of stopping at said wharf, and I believe that during my agency wharfage was paid to James Irwin; before Howard rented said property, I was agent about two years for it, and then received wharfage or dockage from all vessels lying there, except those of Masters & Cox, and the steamboats; on them a commission was paid to me, and by me paid over to James Irwin; since that time I know nothing about it.

2. Whether or no do the purposes for which wharf property is generally used draw many or few persons on it to transact their business; and whether some, and how many, of the persons seen on said lot by you were then on business?

Answer. The purposes for which wharf property is commonly used draw such persons there as have business to attract them; the number of persons depends however upon the number (whether few or many) who have business to transact there. I have seen more persons and larger crowds drawn together on the wharves by curiosity than attracted there by business.

3. Whether or no there is little or much business done on Irwin's wharf?

Answer. Formerly there was a great deal of business there, but at present that of Messrs. Masters & Cox is the chief part; now and then there are other vessels there; the wood business has lately been done there a good deal.

4th. In reference to your answer to the 8th cross interrogatory, I ask whether or no the persons passing on or over said lot of ground claimed a right so to pass; whether or no they so stood on said ground when ordered off by Thomas Irwin; and whether or no said wharf property was then claimed as a public stand?

Answer. I never knew any persons to be ordered off, except drays and carts, when, as I observed before, Mr. Irwin would take a whip and drive off the horses with their drays and carts, and tell them, if they muttered, to go to the corporation grounds for which they paid taxes. I never heard said wharf property claimed as a public street.

Cross examined.

1. Whether or no did you ever see Thomas Irwin whip and drive off horses with their drays and carts, as above spoken of, unless those in whose charge said horses, drays, and carts were, created a noise or some disturbance; otherwise did they or not always pass and repass when they pleased?

Answer. I have frequently seen him whip them off, as I stated before, when they kicked up a dust in fly time. I never knew the drivers to cause any disturbance; I speak only in reference to the horses. I do not know any thing to the contrary of their passing and repassing

when they pleased under other circumstances. I never knew the men to be interrupted when they were going along on their business. When Mr. Irwin whipped off the horses attached to the drays, carts, &c., if their drivers murmured he would tell them to follow their drays, and to go to the corporation grounds, or stand on the corporation property for which they paid taxes.

1. Whether or no did the persons passing on said lot, to your knowledge, claim a right to pass there against Mr. Irwin's consent? Whether or no did they deny his right to use said property for any purpose, or to enclose it if he chose?

Answer. I have no knowledge that persons passing on said lot claimed a right to pass there against Mr. Irwin's consent, nor have I ever heard of it. I never heard of any person denying Mr. Irwin's right to use said property for his own purposes, or to enclose it if he chose. I never heard that matter discussed in Mr. Irwin's lifetime.

Further this deponent saith not.

JOS. NEVETT.

Deposition of William Yeaton.

William Yeaton, of lawful [age,] produced and sworn on behalf of the defendant, answers to the following interrogatories as follows:

1. Where do you reside, and for how many years have you so resided; in what business are you or have you been engaged? Were you acquainted with the late Thomas Irwin, deceased, and with the block of warehouses and wharf property at the east end and south side of King street, and included between that street, Union street, an alley called Dock street, and the river Potomac?

Answer. I reside in Alexandria, where I have lived since the autumn of 1796; at first I was engaged in mechanical business, and afterwards for many years largely in mercantile business, until the embargo and non-intercourse, after which my ships were ruined. I was well acquainted with Thomas Irwin from the commencement of my residence here until the time of his death, being very particularly intimate with him all the time, and residing in a house next door to his residence; and I very well knew the block of buildings in the question described, having myself used them often.

2d. State what was the condition of the said property, and its extent into the river, and what buildings were on it when you first knew it, to whom it belonged then, and *unto* whose hands, if any, it has since passed; and whether or no any and what changes have since been made in said property, or any part of it; and when, and by whom; and what is the nature of the ground included within the above limits.

Answer. The plat marked Y shews the appearance and condition of the said property and its extent into the river when I first came here; the colored parts shewing what were then the buildings contained within the limits exhibited by said plat; No. 1 on said plat is the property which then belonged to Harper's estate and to Slacum; No. 2 to John and Tho. Vowell, and to Geo. Slacum; No. 3 to Jonathan Swift; and

No. 4 to Col. Fitzgerald, who continued to hold it until 1803 or 1804. I believe it was then sold at auction to satisfy a debt due by Fitzgerald to the Government for the default of Vincent, his deputy, when it was purchased by Thos. Irwin. He, Irwin, improved those grounds by filling them up, and by erecting thereon the two warehouses as marked by letters C and D, said warehouses being fifty feet deep, extending from the brick house No. 4, eastward, towards the river Potomac; the said property extending into the river as far as letter E; this is stated partly from my knowledge and partly on conjecture; it may have extended five feet more or five feet less, but that is about the point. It was then, when Mr. Irwin purchased it, mostly under water; afterwards Irwin extended his wharf to letter H; when he bought that property his wharf extended out to about the same distance of Ramsay's wharf; the ground was then very rough, and used for landing lumber.

3. State how far the open space extended from the eastern side of the warehouse purchased by Mr. Tho. Irwin, as nearly as you can, when he purchased it?

Answer. About ninety feet to the dock on the south side.

4. How far did the open space extend on the eastern side of Fitzgerald's warehouse to the head of the slip, when you first knew it; and whether or no it was ever extended, and by whom?

Answer. About seventy feet on King street to the head of the dock; that extension does not embrace the point marked by letter G; my impression is that Thomas Irwin in repairing the dock head on King street extended it a foot or two; he built it up once or twice from the bottom, and always kept it in repair, and cleaned out the dock too.

5. How far did said open space extend when you first knew it, from the south eastern corner of the warehouse to the water?

Answer. About sixty-five feet I suppose.

6th. Whether or no has the said space been since extended, and when, and by whom, and how far?

Answer. In the year 1798 I extended it, (and made the ground, marked by letter F, for Swift and Fitzgerald,) twenty-five feet into the river, as described by the yellow lines on the plat.

7. Whether or no has the open space, or any, and what part of it so extended, been used for any and what purposes, and when?

Answer. I used the said open space when I first came to Alexandria, and before it was sold to the Government, and the ground was occupied by me with lime, lumber, and wood thereon deposited; I erected sheds against the eastern wall of the building marked No. 4, under which I placed lime, of which a great deal was landed here, and much of it sent to Washington and used in the building of the Capitol; sometimes the whole space was covered for a time, tho' it was not always so; and in like manner I occupied and used a part of the open space contained within the yellow lines above described. What I mean by "sheds" in the preceding part of this answer, is planks put up temporarily to protect the lime from exposure to rain.

8. Whether or no was the space on which such sheds were placed, then free from buildings?

Answer. Yes, it was free from buildings; the sheds were placed up against the house to throw the water off as it came down.

9. Whether or no is the said space on which said sheds were placed still vacant and free from buildings?

Answer. No, it is covered by the buildings marked C and D.

10. State whether or no the open space since the sale by the United States has been used by any, and what person or persons, and for what purposes, and in what manner?

Answer. It has been always used by Thos. Irwin, who has frequently piled timber there, and I have used it myself in passing goods, flour, from his store to the wharf, having a wooden track placed along to keep the flour out of the mud; Mr. Irwin placed lumber and other things there, as did also his tenants, and the said space was often lumbered up; Mr. Irwin was always there from morning to night, and especially in the summer time, filling up the rucks, driving away boys, and also removing or sending away carts and drays, to prevent the horses attached thereto from stamping holes in the ground, and threatening to horsewhip them if they did not go, and as soon as they were gone he would go and repair the holes made by the horses' hoofs.

11. State how long and up to what period said Thos. Irwin continued so to use and guard said open space?

Answer. As long as he lived; he was there every day if he was not sick, and no man was more tenacious of his property and of its preservation.

11. Whether or no was there ever any public street laid out or existing over said open space?

(Excepted to by complainants' counsel.)

Answer. It can hardly be worth while to answer that question; the fact is so universally notorious that every body knows there was no street laid out or existing over said space?

12. Whether or no was the said open space generally recognised as the property of any and what person or persons?

Answer. As the property of Thomas Irwin, I never heard it doubted, nor a question asked about it.

13. To whom has the said property been considered to belong since Thomas Irwin's death?

Answer. It belongs to his heirs, among whom a division of his estate has been made, each one paying the taxes on the portion assessed to him; I cannot state to which of his heirs by name this property has been assigned.

14. State whether or no you ever acted as an assessor in Alexandria?

(Excepted to by complainants' counsel)

Answer. I have acted as an assessor in Alexandria.

15. Whether or no has the said block of warehouses, wharf property, and pier, or any and what part of them, been assessed to any and what person or persons, and to whom; whether before or since Thos. Irwin's death; by whom such assessment has been made; what was said property estimated at in said assessment, as nearly as you can recollect?

Answer. In those years when I acted as assessor, that block of warehouses, wharf property, and pier, were assessed to Thomas Irwin during his lifetime, and the said property was then estimated at thirty thousand dollars; as late as 1834 it was assessed to Thomas Irwin, about which time or in 1835 said Irwin died. The assessment of which I have spoken was an assessment in gross of the whole property from the eastern side of Union street to the channel of the river; after the death of said Thos. Irwin, a division of his property was made as above stated, and the said property was then assessed to such of his heirs as it was assigned to in the said division.

(The last question and answer both excepted to by complainants' counsel.)

16. State in what years you acted as assessor, and in what year, or about what time, Thos. Irwin died?

(Excepted to by complainants' counsel.)

Answer. I acted in that capacity in 1831 and 1832; Thos. Irwin died in 1835, or about that year, or in the latter part or fall of 1834.

17. By whom, and in what manner, has said open space been used since Thomas Irwin's death?

18. Whether or no has any, and what, person claimed or exercised any and what authority over said space, or any part of it?

17. Answer. Since the death of Thomas Irwin, I have been less on and about the wharves than before; during his life, I was on the wharf daily, and could state what I saw and knew. But, since his death, I have been less there. I suppose the said open space has been used by his heirs and his tenants; the tenants have used it as a wood yard for the last two years or more; I have seen wood piled up there; and now they have a small house thereon, built, I believe, by William Irwin.

18. I never knew any person but the Irwins to claim or exercise any authority over said space, except Mr. Dixion, who has purchased one of the houses; and has, I understand, asserted a right thereto.

19. What are your reasons for believing that William Irwin built the small house you speak of, as distinguished from the fence there erected?

(Excepted to by complainants' counsel.)

Answer. I understood that W. H. Irwin built the said house, or had it built; I do not mean that he did so with his own hands, but that it was done by people in his employment, and under his direction; and that the house was occupied by the man who had rented the open space and the wharf; that I presume is the fact.

The further proceeding under this commission is adjourned until Saturday morning next, at 10 o'clock, A. M., at the mayor's office, in Alexandria

B. HOOE,
JOS. EACHES,
Commissioners.

Thursday evening, May 1st, 6 o'clock.

Saturday morning, May 3d, 1845. The commission is this day again opened, and the taking of depositions in this case is resumed, at the

1312.

mayor's office, at 10 o'clock in the morning, pursuant to adjournment, when William Yeaton's further examination in chief is proceeded with as follows, viz:

20. State whether or no there were any windows or doors in the said warehouse, now owned by the Dixions, when it was first built; and how many, and in what part of the house; and which side of said house was intended as the front thereof by the builder.

Answer. At the time those houses were built I was consulted by Mr. Irwin, and know that there were in said house, when built, eleven openings into King street; that is, a door and three windows on the lower floor, four windows on the second floor, and three windows in the roof of the house; the side fronting on King street was, at that time, intended as the front thereof by the builder; I then asked Mr. Irwin why he had so many openings in that part of the house, as it was intended as a warehouse, and not for the retail business as at present; when he answered, that, at some future time, it might be desired to extend it, and he would like to have the light from King street.

(Answer excepted to by complainants' counsel.)

21. In which direction was the said extension to be made; and about what time was it that you had the conversation above set forth?

Answer. The conversations I had with Mr. Irwin were held at various times whilst the warehouse was in a course of construction. I was very intimate with Mr. Irwin, and was at the building perhaps every day; certainly very often. The extension above spoken of, or referred to, must have been towards or into the river, as there was a large warehouse to the west, King street to the north, and no other possible way in which it could be extended.

22. Can you state whether the doors of said building opened inwards or outwards?

Answer. I can't be positive about that; but it appears to me that they opened inwards; on King street, I am pretty sure they did, for he would not open them into the street.

Cross examination of complainants' counsel.

1. Question. Who drew the plat, above referred to, marked Y; when was it drawn, and at whose instance and request?

Answer. I drew the said plat within the present week; having understood that I was to be examined as a witness in this cause, I drew the said plat for my own satisfaction. I measured the ground and prepared the plat without the knowledge of Mr. Irwin, until I had prepared it, wishing to use it for illustration in the course of my examination.

2. Question. What is the situation of the ground adjoining the eastern front of the warehouse, marked C and D, and on the south side of those marked C and No. 4, on said plat; is it, or any part of it, paved or unpaved; if the former, by whom, and when; and the extent thereof?

Answer. The ground to the east of C and D was rough and uneven; Mr. Irwin was always engaged there with his rake, &c., smoothing the surface; that which is to the south of said warehouses, (the alley,) was paved by Fitzgerald and Swift before Mr. Irwin bought the said pro-

perty; but in what year I cannot state with accuracy; it may have been, and I dare say has been, repaired since; it was used as a common thoroughfare to the two wharves.

3. Question. Whether or no is there now any front pavement adjoining the eastern front of the warehouses C and D, as laid down on said plat; if so, state of what, and when, and by whom, it was made; have any person or persons passed over the same during Thomas Irwin's lifetime, or since; and when, and how often; and whether he, or his heirs, were present when any person or persons, if any, ever so passed over it?

Answer. I have not examined the ground particularly; but have seen there the old remnant of a pavement a few feet; I do not know when it was made, nor by whom; I observed some bricks there, which accidentally attracted my attention, a few days ago. I can't say that it extends three feet; I have seen a few bricks opposite in front of the east door of Dixion's house; and that I never discovered 'til two days ago; thousands of persons must have passed over said pavement, for in going into, and passing out of, the said house, they must have passed over the same; I do not remember ever to have seen Thomas Irwin, or his heirs, present when such passing over said ground has taken place; it was not there when Thomas Irwin was alive; he never saw it.

4. Question. State whether any person or persons, and who, and when, and how many, and how often, and any vehicle or vehicles, and what kind, and how many, and how often, in the lifetime of Thomas Irwin, deceased, or since, ever passed over the space of ground immediately to the east of the east front of said warehouses C and D, and running north and south the extent of the eastern line of said warehouses.

Answer. During the lifetime of Thomas Irwin, the passage from King street to the open space, immediately in front of the eastern line of the said warehouses, was uneven, and difficult for carts, drays, &c., when laden; and the more general passage to the wharf was down the alley on the south side of said warehouses to the wharf; and, in returning empty, they would pass into King street between the northeastern corner of Dixions' warehouse and the wharf; at that wharf a very large business was done; and that of Charles J. Catlett was to a very large amount, perhaps a million of dollars or more; and more than half the carts and drays, and business, was done at that wharf, and through that channel, at that time; I cannot undertake to state the number of persons who so used the ground here mentioned; there were a great many, and, as I have said, more than half the drays and carts employed in the business of the town; that alley was used as the approach to Janney's and to Irwin's wharves, being the chief mode of communicating with King and Prince streets from the said wharves; sometimes I have known Thomas Irwin to pile up anchors weighing many tons at and near the corner of the dock marked G on the plat, and to fill up the space halfway towards the corner of Dixions' warehouse; I bought the said anchors after the war, and removed them to Washington, and sold them; and sometimes I have known Mr. Irwin to pile up logs so as to fill up the intermediate space between the anchors and the

corner of Dixions' warehouse; they did not, to be sure, remain long in that situation; the anchors remained, as above described, for two years, or about that time; when Mr. Irwin was repairing his wharf, taking up the logs, &c., he would pile up the logs against the said warehouse, and over the space between that and the wharf; when he was busy in repairing his wharf he would not *to* troubled by any body; and the carts and drays, I suppose, annoyed him.

5. Question. Is there, and how long has there been, any passway between the northeast corner of Dixions' said warehouse and the letter G on said plat; what is the red line over said space intended to represent; what is the situation of the ground over which said line is drawn, or intended to represent; is it open or not; when and by whom was the ground made embraced in the triangle on said plat on which is written "G, Irwin's improvement?"

Answer. The space between the northeast corner of said Dixions' warehouse and the letter G on said plat has always been open, except when it was occasionally occupied, as above stated, by Mr. Irwin; there is a thirteen foot passway on King street at the north of Dixions' warehouse. The red line is intended to represent a part of the property of the Irwins; the ground over which that red line is drawn is open; the ground represented by the triangle G, was made by order of William H. Irwin last fall, I believe, but am not positive as to the time, but within five or six months past.

6. Question. What was the distance from the southeast corner of the warehouse, marked on said plat "No. 4," to the dock, at the time Thomas Irwin bought said property?

Answer. About ninety feet.

7. Question. Were there any doors and windows, and how many, in the eastern front of said Dixions' warehouse when the same was built; were there any changes in the same during the ownership thereof by Thomas Irwin and his heirs; which was used as the front of said warehouse during said ownership; was there any business, and what, and by whom done in said warehouse; and through what door or doors, if any in the same, was the said business, if any, chiefly conducted?

Answer. There were three doors. There was one door and two windows on the lower floor; one door and two windows on the second floor, and one door and two windows in the gable end. It may be that Howard, the man they had there, made some changes to suit his own convenience; I do not know of any other changes. The side and end were both generally used, and might both be called fronts I suppose; that is merely my supposition. The business was done at both fronts; if there was any thing on the north front to go into the warehouse, it was carried in through the door on King street; if, on the contrary, any thing was on the wharf, and to be brought into the store, the eastern door was used; and so also for carrying things out of the warehouse to be shipped. That is the general course of business, and I believe it was adopted in this case; the tenant in the house would certainly use the same as might suit his convenience or promote his advantage.

Examination in chief.

1. State what is the dotted line, running east and west through the centre of the alley to the north of Irwin's warehouses, intended to represent; by whom and for whose convenience was said alley laid down on plat Y made and paved, and whether or no was it laid out by agreement between any and what persons?

Answer. The centre and division line between the Irwins' and Janneys' said alley, was laid out by Colonel Fitzgerald and General Young, the original proprietors of the ground, I believe; it was made for the convenience of the proprietors of the ground marked on the plat B, C and D. I can't tell whether or no it was laid out by agreement between any persons and whom; it is likely they agreed, or it would not have been there. After Thomas Irwin became the purchaser, the alley to the south of the warehouses C and D was extended and paved by him, that is, I mean his half or portion of the said alley.

2. State what you think Dixions' warehouse is worth as a business stand, supposing it has no right of way to the eastward, and what would be its value if it had such a right of way to the east?

Answer. My opinion is that Dixion's warehouse without an eastern front is worth three thousand dollars; the wharf property being greatly improved by the prospect of the completion and operation of the canal, the locks being nearly finished, and likely to bring the business to every man's door; if the quantity of ground required for a right of way were defined, I could better give an opinion; but to give up as much as might be claimed for a right of way, over which my own right to the property was to be relinquished, I should consider it very valuable. I should suppose it to be worth one-fourth of the cost of the house. In consequence of being deprived of a right of way when I was purchasing the property from Ramsay, forty feet on King street and forty feet on the river, as represented on the plat Y to the west of "Ramsay's wharf," I had to pay a thousand dollars more than the sum originally agreed on as the price of the property, in order that I might secure a river front, guarantied to me by Ramsay and his heirs; thus making the amount of my purchase three thousand instead of two thousand dollars; the guaranty by Ramsay and his heirs being that no building should ever be erected between my eastern line and the river.

Cross examination by complainants' counsel resumed.

Is Dixions' warehouse worth more or less now than when they purchased it; what expenditures if any have said Dixions made on said property?

Answer. The said warehouse is worth more than at the time of the purchase by the Messrs. Dixion; all the property on the wharf has increased in value, and I think is worth thirty per cent. more now than it was; all the warehouses which were formerly built, besides others lately erected, are occupied. I cannot say what is the amount expended by the said Dixions on said property, but it has been considerable; they have changed it very much, made it more valuable and more modern.

Interrogatory by defendant.

What do you suppose was its value when the Dixions purchased it in 1842?

Answer. It was put up at public sale, and the price which it brought is the best test of its value. It was purchased by the Messrs. Dixion for twenty-eight hundred and odd dollars.

Would it have been worth more or less than said sum supposing it to have a right of way on the east of the river?

Answer. If it had the advantage of the right of way it would be worth considerably more, one-third more.

Further this deponent saith not.

W. YEATON.

Adjourned 'til Monday next, at 4 o'clock, P. M.

JOS. EACHES,
B. HOOE,
Commissioners.

(The plat Y referred to in the foregoing deposition of W. Yeaton is on page 278.)

Monday evening, May 5th, 1845. The commissioners met at the mayor's office, at 4 o'clock, P. M., pursuant to adjournment, and proceeded to take depositions in this case.

Deposition of Edward Sheehy.

Edward Sheehy, a witness of lawful age, introduced by the defendant, being first duly sworn, deposes and says, in answer to interrogatories, as follows:

1. Where do you reside; and how long have you so resided? Are you acquainted with the warehouse at the east end and south side of King street, now owned by the Dixions?

Answer. I reside in Alexandria, where I commenced housekeeping in 1816. I kept store in the warehouse above described, now belonging to the Messrs. Dixion, from 1828 to 1830, to the best of my recollection.

2. State to whom the open space between the said warehouse and the river belonged, by whom it was used, and for what purposes.

Answer. I had wood corded so near the warehouse as barely to leave room for a cart or dray to pass; Mr. Irwin would not let me cord wood at the lower end or part of the wharf, and told me I could cord it at the upper end, next to the warehouse; I considered that the said open space belonged to Irwin's estate.

3. Whether any and what person exercised any and what authority, over said space.

Answer. William Irwin exercised authority over said space. When Mr. Chamberlain kept store in that house, there was a shed over the door, which William Irwin had taken away when Chamberlain left the house; when I rented the store, I wished to have the shed replaced, which Mr. Irwin would not allow to be done.

4. Whether or no have you ever known any persons or carts turned off from said space, and by whom, and in what manner, and when?

(This question excepted to by complainants' counsel.)

Answer. In 1828 and 1829, when I kept store there, I have known Wm. Irwin to drive off cartmen, &c., with their horses and carts.

5th. Whether or no is any person, and who, entitled to receive wharfage for the use of said space, and for what privilege is wharfage paid?

Answer. I paid wharfage to Wm. Irwin for the wood I had landed on said open space; wharfage is paid for the privilege of landing wood.

6. Whether or no was the said open space generally considered to be the property of any, and what person or persons?

(Excepted to by complainants' counsel.)

Answer. I always considered it to be the property of the Irwins; I have heard others say, but I don't recollect now who, that it was private property between the warehouses and the river; and about twenty years ago I heard several persons say so, when I have enquired if that was a public highway; but who they were I do not recollect; I heard that remark made as applicable to all the warehouses on the river.

7. State by whom the said open space was kept in repair; and whether it requires much or little repair.

Answer. It was kept in repair by the Irwins, but I do not think it required much repair during my stay there.

8. When you desired to pile wood or other merchandise on said open space, whether or no did you apply to any, and what person?

Answer. Mr. Wm. Irwin had charge of the property when I kept store there, and before I first landed wood there, I asked his permission; and that was the only place where he would allow me to land wood; if he had allowed me to land wood on the centre, or any part of the wharf, I could have done a considerable business there; but his refusal to give me that permission did me a great injury. He told me that I could land wood at the head of the dock, between Irwin's and Janney's wharves, and I did land wood there; and those were the only two places w[h]ere Irwin would allow me to land wood. I occupied a small space on the north side of the wharf near the dock, and in cording up my wood I left a space between the warehouse and my wood corded up, wide enough for carts, drays, &c., to pass between the said wood and the corner of the warehouse.

8. By whose direction was said space left; and if wood had been piled from the northern corner of the warehouse to the dock, and also from the southern corner to the dock, whether or no would there have been any and what way of getting from the streets to said Irwin's wharf?

Answer. Mr. Irwin told me that I could buy what wood I pleased, and that I might occupy the head of the dock; he did not prescribe any space that I should leave, but left it to myself. If the wood had been so piled as described in the above question, I do not know how carts and drays could have gotten to Irwin's wharf; they could have com-

municated with the warehouse I occupied by the door on the north side, fronting Mr. Wheat's, where I received and took in hogsheads of sugar and molasses.

9. Whether or no have you ever known any person, and what persons, to assume authority over carts or drays standing on said open space; whether or no have you ever known carts or drays driven from, or prevented from standing on any and what part of said space, and when, and in what manner, and by whom in particular, and under what authority?

Answer. I have known Mr. Wm. Irwin to order them off, and has ordered them off from the ground in front of my store, when they were crowding there and in the way, when I was getting goods from the Baltimore packet; and under Mr. Irwin's authority I have driven them off, when in my way as above stated; he told me to drive them off when they were in my way.

This question and answer are both excepted to by complainants.

10. Whether or no was there any and what street between said warehouse and the river?

Answer. I do not know how I can answer that question. Some twenty odd years ago, I think I heard some persons say, that there was a street to the south of Mr. Fowle's warehouse, called "Strand street;" it appears to me that the place I have heard called "Strand street," was an alley between Duke street and Wolfe street; it was some time ago, previous to my keeping store on the wharf, and my recollection about it not very distinct; I never understood that there was any street between the warehouses here spoken of and the river.

Edward Sheehy cross examined.

1. Question. Is the passway immediately to the eastern front of Dixions said warehouse, and along the wall of the same, open or obstructed?

Answer. It has been obstructed, but I cannot say how it is at this day; I have seen an enclosure there, and wood piled up so as to obstruct it; but I cannot swear whether there was or not room for carts and drays to pass.

2. Question. When and by whom was said obstruction put up; and was there ever, prior to its erection, any building, fence, or other obstruction adjoining the eastern front wall of Dixion's said warehouse, whereby persons, carts, horses, and drays were prevented from passing and repassing?

(Question excepted to by defendant's counsel.)

Answer. I heard something said about the fence being put up, and I went down and saw Mr. Wm. Irwin there, and heard it said that Mr. Dixion had got an injunction. I recollect no obstruction there prior to the erection of that referred to in the above question, so as to prevent carts and drays from passing.

3. Question. Have you ever passed over the space of ground on which said obstruction was erected; have you ever seen any person or

persons, when, and whom, and how often, and any vehicles, and what kind, if any, stand upon or pass over said space of ground, and when, and how many?

Answer. I have myself passed over said space of ground, and have seen persons, and carts, and drays, also pass over the same; but how many and how often I cannot say.

4. Question. Was the passage over and standing upon said space of ground by said persons and vehicles frequent or otherwise; was it confined to any particular season of the year or month; and in what respect, if any, did the passage over and standing upon said space of ground by said persons and vehicles differ from the passage over and standing uopn a street by persons and vehicles?

(Excepted to by defendant's counsel.)

Answer. The passage over and standing upon said space of ground was frequent; it appears to me that there was less passing there in the winter season than at any other time of the year; I am not aware that there was any difference in the frequency of persons and vehicles passing there in the spring, summer, and fall; I cannot say how the passing over and standing upon said space of ground differed from passing over and standing upon a street; I may say that there was this difference, that when carts and drays assembled in crowds on the open space before my door, I would drive them off, so as to prevent their being in my way.

5. Question. What is the distance from the space of ground on which said obstruction was erected to that part of Irwin's wharf on which you were in the habit of landing wood, &c., as referred to by you when you occupied said Dixion's said warehouse?

Answer. I cannot tell the distance without I were to go and measure it, and then I could tell.

6. Question. Were there any doors and windows in the eastern front of Dixion's said warehouse, and how many?

Answer. There were two doors, and to the best of my recollection, four windows; one door in each story.

Adjourned until to-morrow evening at 4 o'clock.

JOS. EACHES,
B. HOOE,
Commissioners.

The commissioners met this day, (Tuesday, May 6, 1845,) at 4 o'clock, P. M., at the mayor's office, pursuant to adjournment, and resumed the taking of depositions in this case by proceeding with the cross examination of Edward Sheehy.

7. Cross examination continued. Whilst you were in the occupancy of Dixions' said warehouse, thro' what door or doors did you transact business?

Answer. The principal door that my customers entered was the door fronting the water.

8. Question. Was said door, or either of the windows in the lower

story of the eastern front of said warehouse, so obstructed whilst you occupied said property that you had not access thereto; and whether or no was there ever whilst you occupied said property, or before, or since, until the erection of the obstruction above named, any obstruction preventing persons, carts, and drays, from passing in front of said Dixions' warehouse?

(Excepted to by defendant's counsel.)

Answer. From the outside there was no obstruction of the said doors, or either of the windows, in the lower story of the eastern front of said warehouse whilst I occupied that property, so as to prevent my access to it; since I have known the said property there has been no obstruction there preventing persons, carts, and drays, from passing in front of said Dixion's warehouse until that above described; not to my recollection and the best of my knowledge.

9. Question. In your answer to complainants' 3d interrogatory you speak of a shed over a door in said warehouse, and that when you rented said warehouse Mr. Irwin would not permit you to erect such a shed; state over what door said shed was when Chamberlain occupied said warehouse; whether or no it was the same door over which you desired to erect a shed; and why it was that said Irwin would not permit you to erect a shed over said door.

Answer. The shed above spoken of was at the time referred to erected over the east door and windows fronting the river; it was the same door over which I desired to erect the shed; I do not know the reasons which caused Mr. Irwin to prevent me from erecting said shed; I told him that he had allowed Mr. Chamberlain that privilege, and desired to know why he would not indulge me with the same privilege; when he said that it disfigured the eastern front of his warehouse, and he therefore objected; to the best of my recollection that was the reply he made.

10. Whether or no have you ever seen Thomas Irwin, deceased, or any of his children, and which of them, if any, since his death, present when the persons and vehicles above spoken of were passing over the said space of ground in front of Dixion's said warehouse; and did said Thomas Irwin, or his children, attempt to arrest or prevent the said persons and vehicles from passing over said ground?

(Excepted to by defendant's counsel.)

Answer. During the lifetime of Thomas Irwin, I had very little opportunity to know what was his course in relation to this question; I then resided in Prince street, was generally very busy, and was seldom on the wharf except to land goods, or deliver them; I have seen Wm. Irwin present at such times, and known him to order persons with carts and drays from that ground, when they were crowded there in front of said warehouse, and especially on the arrival of steamboats, &c.; and Mr. Irwin authorized me to drive them off when I found them there in my way.

11. Question. Whether or no have you ever seen any person or persons, and who, and how many, or any vehicles, and how many, pass on said space of ground whilst said Mr. Irwin was present, who were not arrested or interfered with by him?

Answer. I have seen persons passing there who were not interfered with by Wm. Irwin. It was only when they obstructed said space of ground that I have seen him disturb them; I do not know who were the persons, nor how many, that I have seen pass there whilst Wm. Irwin was present; to the best of my recollection I have seen vehicles pass there when they were not arrested or interfered with by Mr. Irwin; I might have known the persons at the time whom I have seen pass there, but at this distant day I cannot recollect who they were.

Re-examination.

1. In your answer to the 9th cross interrogatory, whether or no do you undertake to repeat the exact words of Mr. Irwin?

Answer. I think those were the words he used; to the best of my recollection they were; indeed I am almost confident those were his words.

2. Whether or no was there any other business door to said warehouse than that in the east end; what was the size of the same; whether or no was it ever used for business purposes; whether or no were there any, and how many, windows and doors fronting on King street; and how did the length of said warehouse on King street compare with the extent of its side next the river?

Answer. There was a business door on King street; it was a large door, but I cannot tell the dimensions of it; about the size of the door in the east end of the house; I have used it for business purposes; all the goods I received in my store, such as sugar, molasses, bacon, and all except tea and coffee, were taken in at that door; there was one door, and I believe eight windows, four in each story, fronting on King street; I should suppose the house on King street was of double the extent of that part next the river; I have never taken the dimensions of the house.

Further this deponent saith not.

EDW. SHEEHY.

Deposition of John Douglass.

John Douglass, a witness of lawful age, produced and sworn, on behalf of the defendant, answers to the following interrogatories, as follows:

1. Whether or no are you acquainted with the block of warehouses and the wharf property, comprised between Union street and alley on the south King street and the river Potomac; state to whom it belonged; whether or no you ever, and when, occupied any and what part of said building or property, and under whom you held?

Answer. I am acquainted with the block of warehouses and the wharf property comprised within the boundaries in the above question described; it belonged to the estate of Thomas Irwin, deceased, and we accounted for the rent of said property, at first with James and William H. Irwin, subsequently with Mr. Carey, for the southern warehouse, which was occupied by George Johnson & Co., of which I was a member.

2. State whether or no the said whole block of warehouses fronted on any, and how many streets, or alleys.

Answer. The whole block, embracing three buildings, fronted on Union street, King street, the alley to the south called Dock street, and on the river.

3. State whether or no the wharf property between said warehouse and the head of the docks was used and occupied by any and what person, and for what purposes.

Answer. All the space there was used by the Messrs. Irwin, who exercised a control over it; George Johnson & Co. used the space at the head of the dock on the south side in receiving quantities of wheat, corn, and other grain.

Adjourned until to-morrow evening at 4 o'clock, at the mayor's office in Alexandria. Tuesday evening, 6 o'clock, May 6, 1845.

JOS. EACHES,
B. HOOE,
Commissioners.

The commissioners again met on Wednesday evening, at 4 o'clock, and proceeded with the depositions in this case, by resuming the direct examination of John Douglass. May 7, 1845.

4. Whether or no was any person, and who, entitled to receive wharfage for any and what articles placed or piled on said open space; in what manner and as what kind of property was it used and considered?

Answer. I considered James and Wm. H. Irwin entitled to receive wharfage on any and all articles placed on said open space, embracing that which extends from the foot of King street to the centre of what is called Dock street, being that which I consider as Mr. Irwin's property; I never knew, of course, any thing about the boundaries of Irwin's property, but that was always recognised as belonging to them whilst we occupied that property; it was used and considered as wharf property usually is.

5. Within what years was your occupancy of said warehouse comprised, and for how many years did it continue, and when did it determine?

Answer. We were there from the early part of 1831 until 1837 or 1838, some six or seven or eight years; I think it was in 1838; it was 'til the close of 1837.

6. Whether or no have you ever known any and what person to turn off from said space any persons or carts, and when, and in what manner?

(Excepted to by complainants' counsel.)

Answer. I have known in one instance Mr. Wm. H. Irwin telling the drayman that they should not congregate there before that property; I mean the whole property, no particular portion of it; he came there one evening when a number of draymen were collected together under the shade of the houses, when he, Wm. H. Irwin, ordered them away, and said they should not stay there, that their horses stamping cut up the ground, and their being there was otherwise a nuisance.

7. To whom did he mean they were a nuisance?

Answer. To the owners and occupiers of the property.

8. Who kept said open space in repair?

Answer. I understood that James and Wm. H. Irwin did; they were the only persons I saw attend to it.

Cross examined by complainants' counsel.

1. Who owns the warehouse on the south side and east end of King street, in Alexandria; and how long has the same been thus owned?

Answer. I understand that Mr. Dixion is the present owner; I understood some time last year that he had purchased, but I do not know it; it may have been before.

2. Question. Is that a part of the block of buildings which in your answer to complainant's 1st interrogatory you have described as having belonged to the estate of Thomas Irwin, deceased; did you know said warehouse in Thomas Irwin's lifetime; and for what length of time have you known it?

Answer. It is the same property, and I did know it in Thos. Irwin's lifetime, and have known it for a number of years; but I cannot state how many.

3. Question. Were there, during the ownership of said warehouse by Thos. Irwin, deceased, and his heirs, and up to the period when the same was purchased by said Dixions, any doors and windows in the eastern front of said warehouse? And if any, describe the same.

Answer. There was a door in the centre of the east end of that building looking out on the wharf, and is the one which was principally used; there was a window on each side of that door, and there was also a door on King street, on the north side of the house; there was no alteration that I know of up to the time of Mr. Dixion's purchasing the property.

4. Question. In what story of said warehouse were the door and windows of which you have spoken in your last answer; were there any doors and windows, or either, in the upper story or stories of said warehouse?

Answer. In my answer to the last interrogatory I referred to the lower story; there was a door in the second story over that which I described in my answer to the last question; and I believe there was a door also in the attic, but of that I am not positive; there were windows in the second story corresponding with those in the lower story; as many and alike situated in reference to the door.

5. Question. Was any business, and what, conducted in said warehouse during the period referred to?

Answer. It was occupied variously, at one time by Daniel F. Hooe, as a currier's shop, and at other time Robert I. T. Wilson and Andrew J. Fleming occupied it as a grocery store; and it was, I think, used for a short time as a place in which goods were stored; and the Messrs. Janney used it at one time to store their wheat in, and lost much of their wheat by the rising of the tide, which was up three or four inches into the body of the wheat.

6. Question. Which was used as the front of said warehouse during the period alluded to?

Answer. The east end of it.

7. Question. Through what door or doors did persons going into and out of said warehouse enter and depart during said period?

Answer. The general entrance was at the east door, occasionally the side door was left open and was used; the common entrance was the east door.

8. Question. Is there any vacant space or alley between Dixion's said warehouse and that owned by Carey, which you say was formerly occupied by you; what is the extent of said vacant space or alley?

Answer. There is an alley of pretty good size between those said houses, (Dixion's and Carey's); I suppose it may be eight or ten feet.

9. Question. Was there at the time you occupied said Carey's warehouse, or before, or since, up to the period of said Dixion's purchase, any foot pavement adjoining the eastern front wall of said Dixion's and Carey's warehouses, or either of them?

(Excepted to by defendant's counsel.)

Answer. There was a foot pavement, such as is described in the above question, adjoining the eastern front wall of both the said warehouses, at the time embraced in said question.

10. Question. How long have you known said pavement; and what was its width and its extent from north to south?

Answer. I have known it ever since I became an occupant of one of the houses. I think it was there when I went; and it extended the whole width of the eastern front of both the said warehouses. I should judge the pavement was about four feet wide. It is a mere guess, but I should think it was of that width. I do not mean to say that the pavement crossed over the alley between the two houses, but that it extended in front of the two houses. I know that the said pavement extended the whole eastern front of each of the said houses; I do not think it crossed over the said alley, but am not positive; it has been five years at least since I occupied the property.

Adjourned until 4 o'clock, P. M., on to-morrow evening, at the mayor's office.

JOS. EACHES,
B. HOOE,
Commissioners.

Wednesday, May 7, 1845, 6½ o'clock, P. M

Thursday, May 8, 1845. The commissioners again met at the mayor's office, pursuant to adjournment, and the cross examination of John Douglas is resumed.

11. Question by complainants' counsel. In your answer to the defendant's 3d interrogatory you speak of the use of a space of ground by the Messrs. Irwin between Carey's warehouse and the head of the dock; please describe the space of ground and its location, to which you allude in said answer.

Answer. The ground immediately in front of Carey's house, whilst it was occupied by George Johnson & Co., and between that warehouse and the wharf, was a common thoroughfare. We piled up wood on the

wharf head, and had sometimes three or four tiers of wood next to the water; and we used as much of the open space between our warehouse and the wharf as we conveniently could, taking care not to interfere with the thoroughfare. It was against our interest to obstruct that open space, and we therefore never inquired about our right to do so. It had been always used as a free passway for carts, drays, &c., since I knew it.

12. Question. How far does said thoroughfare extend northwards of Carey's said warehouse?

Answer. Ever since I have known it, it has extended northward as far as King street.

13. Question. Is there or not any house, building, fence, or other obstruction upon any portion of said thoroughfare; if any, describe it; when and by whom the same was erected, and its relative situation and proximity to said Dixion's and Carey's warehouse, or either of them.

Answer. Since George Johnson & Co. occupied the property (which is now Carey's,) there has been a small frame building erected in front of the alley between Carey's and Dixion's warehouses, and covering a portion of each of said houses. I am not certain that the frame house does extend across the front of that alley; the yard enclosed with that frame building I know did touch the warehouse of the Mr. Carey, but I do not think the building itself does, nor do I know that the building now touches the other house. I think it is set further out on the wharf. I do not know any thing about the house, but I know that Wm. H. Irwin was attending to the erection of the fence some time last year. The fence that was then erected is I think down; whether any other has been put there, or whether or no there is a passway between that small frame house and Dixion's warehouse I do not know.

14. Question. Whether or no was ever any obstruction over said thoroughfare prior to the erection of the fence and house referred to; how long prior to the erection of said fence had said thoroughfare existed; what person or persons, and how many and how often, passed over the same; and whether any vehicle and what kind, and how many and how often, passed the said thoroughfare?

Answer. There never was any obstruction over said thoroughfare, prior to the erection of the fence and house referred to, within my knowledge or recollection; the said thoroughfare has existed ever since my knowledge of the wharf property for a number of years; persons and vehicles without number, passed there as freely and regularly as they passed upon King street or any other street; I cannot undertake to define their numbers.

15. Whether or no, whilst you occupied said Carey's warehouse, did you pay wharfage for landing articles on said thoroughfare?

Answer. For landing articles from vessels on the heads of the docks or wharves, we did pay wharfage, and we used so much of the ground next to the heads of the wharves or docks as was required for the piling up the goods so landed; always leaving a gangway between the said goods so landed and piled up, and the corner of the warehouse, wide enough for three or four drays or carts to pass abreast.

16. Question. Whether or no did said fence and house, or either of them, interrupt the passway in front of the eastern side of Dixions' said warehouse; was the quantity of light or air, or either, which would otherwise have entered into said front of said warehouse lessened by the erection of said fence or house, or either of them; and how was the value of said warehouse affected by said obstructions, or either; was it increased or diminished, and how much?

Answer. The said fence and house did interrupt the passway in front of the eastern side of said Dixions' warehouse. I should think that the quantity of both air and light was lessened by the erection of the above mentioned obstruction. I should certainly say that the value of Dixions' warehouse was diminished by the erection of said obstruction, the fence and building above described, by depriving said warehouse of what had been its principal front; as to the amount of injury done to said warehouse, I cannot positively speak. (Excepted to by defendant.)

Adjourned until to-morrow (Friday,) at 4 o'clock, P. M., at the mayor's office.

JOS. EACHES,
B. HOOE,
Commissioners.

May 8, 1845.

Deposition of John Howard.

Friday evening, May 9th, 1845. The commissioners again met at the mayor's office, pursuant to adjournment, and resumed the examination of witnesses in this cause, when John Howard, a witness of lawful age, introduced by the defendant, answering interrogatories, deposes and says:

1. State whether or no you are acquainted with the block of warehouses and wharf property on the south side of King street, included between Union street, an alley, and the river Potomac; whether or no you ever occupied any and what portion of said property, and from whom you held it, and for how long?

Answer. I have known the property described in the above question for a good while, perhaps for twenty years, but not so intimately until the last few years. In 1841, I rented the property from Wm. Irwin, for which our contract was closed on the 26th day of June. Before closing the contract, and to guard against any difficulty, I took Wm. Irwin on the wharf, and asked him what portion of the property he rented to me; he pointed out to me, shewing me that he rented all the wharf from the walls of the building out into the Potomac, as far as they extended; at the same time stating that neither of the warehouses had any wharf in front of them at all, nor east of them. I held the property for two years under a lease from the year 1841; and from 26th June, 1843, until the first of April last, I occupied it without a lease. (Excepted to by complainants' counsel.)

2. State for what time you rented the property after the expiration

of your lease, and when that time expired; and at its expiration on what terms you held the property up to the 1st April, 1845?

Answer. From 1843 to 1844, I took it at the same rate that I had held it under lease; from the 26th of June, 1844, to the first of April last, I was to have it for six hundred and twenty-five dollars; if I made more I was only to pay that sum ($625) for it, but if I did not make that sum ($625,) I was only to pay what I made on the wharf, what I could collect, rating the wood that I bought at ten cents per cord wharfage.

3. Describe the northern and southern limits of the property leased and occupied by you as aforesaid.

Answer. The northern limits I always considered went as far as the line of King street; extending south to half way the width of Dock street; that is what Mr. Irwin shewed me for the line.

4. Whether or no, during any and what portion of the occupation of said open space by you as aforesaid, any person, and who, occupied the warehouse now held by the Dixions?

Answer. I occupied it myself during the whole time that I occupied the wharf, and until the last few months. I occupied both warehouses until September last.

5. Whether or no did you or any other and what person, make any and what use of the open space between said warehouses and the river, and in what manner and to what extent the said open space was used?

Answer. I used it for a part of the time for piling wood. I do not think it was used in any other way except for piling wood.

6. Whether or no did any and what person exercise any and what authority over said space, and in what particular mode and by what acts it was manifested?

Answer. There was no body exercised any right over it during my holding it only myself. I considered I had a right to use it in any manner I wished, to keep persons from crossing it, and to prevent carts and drays from standing there. I had several times driven carts and drays, and sometimes hacks, from that open space, to prevent it from being cut up by the horses stamping on it.

7. Whether or no did you exercise said authority at any and what person's instance, or under any and what person's instructions, and when such instructions if any were given, and under what circumstances?

Answer. I used the authority under the instructions of William Irwin, which were given before our contract for the renting of the wharf was closed, begging me not to let the carts and drays stand there cutting up the wharf, or the open space as you term it. (Excepted to by complainants' counsel.)

8. Whether or no is said open space liable to require repairs, and to what extent, and by whom and at whose expense said repairs were made; and if said space were left unrepaired for a series of years, what would be its condition; and how is said space constructed, and on what sort of a foundation does it rest?

Answer. Yes, sir. I have had a considerable number of loads of

dirt hauled there and charged the same to Mr. Irwin; if said space were left unrepaired for a series of years, I should think it would be impassable; I am hardly able to say how the foundation is. I do not know whether it is built on piles or not; the upper part of the foundation is made of dirt. I suppose it is built like all other wharves are.

9. Whether or no is there any and what street or highway in the town of Alexandria, between the range of warehouses and the river; and whether or no any such street passes over any and what part of said open space? (Question excepted to by complainants' counsel.)

Answer. Between the range of warehouses spoken of in the above question and the river there is no street that I know of, nor any highway for the public; there is no street passing over the said open space.

10. State of what the surface of said open space is composed or made.

Answer. I think the surface is made principally of this—Bermuda ballast.

11. Whether or no is said open space, or any part of it, paved like the centre of the streets, or in any and what manner?

Answer. It is not paved.

At this point of the examination the proceedings are suspended, and the commissioners adjourned until 4 o'clock to-morrow (Saturday) evening, to meet at the mayor's office.

JOS. EACHES,
B. HOOE,
Commissioners.

Friday, May 9th, 1845, 6½ o'clock, P. M.

Saturday, May 10th, 1845.

The commissioners again met at the mayor's office at 4 o'clock, P. M., pursuant to adjournment, and proceeded in taking depositions in this cause, by the further examination of John Douglass, in chief, a witness introduced by the defendant, Wm. H. Irwin.

Re-examination.

1. In reference to your answer to the 3d cross interrogatory I ask, whether or no any and what change has been made in the relative positions of the door and windows in the eastern end since the ownership of the Dixions, and by whom said changes has been made?

Answer. If there is a door now in the east end of the house it is near the corner near to King street, and if it has been so altered, I suppose it has been done by Messrs. Dixion. I do not speak positively in regard to any such change in said warehouse; my impression is derived from a glance in passing along.

2. State what now occupies the place where the door was which you described in the said answer to the 3d cross interrogatory.

Answer. I am not sure that I can say, unless it is a window. I can't speak positively, but think it is a window.

3. In reference to your answer to the 11th cross interrogatory I ask,

whether or no you mean by the words, a "free passway, &c." that carts had a right to pass there, or that they simply had done so?

Answer. I mean that they had done so; of the right I know nothing.

4. Whether or no do persons and carts usually have free access to the wharves on the east of the town? Whether or no said Irwin's wharf is public or private property; and whether or no it is usual to encumber the wharves as to leave no passway to and from them for carts and drays; and if a wharf were cut off from all connection with the streets, what would be the effect on its value?

Answer. Persons and carts do usually have free access to the wharves on the east end of the town. I presume Irwin's wharf is private property; it certainly is so. It is not usual so to encumber the wharves as to leave no passway for carts and drays; and if a wharf were cut off from all communication with the streets, its value would be lessened very materially.

Further this deponent saith not.

JOHN DOUGLASS.

DISTRICT OF COLUMBIA, *Alexandria county, sct:*

We, Joseph Eaches and Bernard Hooe, commissioners named in the two commissions hereto attached, do hereby certify, that the foregoing depositions of sundry witnesses introduced before us by William H. Irwin, the defendant in this cause, were taken before us, pursuant to the notices, and under the authority of the commissions hereto annexed, at the mayor's office, in the town of Alexandria, that being the office of Joseph Eaches, esq., commencing on Saturday, the 26th day of April, in the year one thousand eight hundred and forty-five, and continued from time to time, and from day to day, in pursuance of the authority derived under the notices aforesaid, as will appear by the several notes of adjournment on the face of the said depositions, regularly entered and signed by the said commissioners, until the tenth day of May, in the year last aforesaid; that the depositions aforesaid were wholly reduced to writing by one of the said commissioners, the interrogatories in chief, and on the cross examination, having been written by the counsel respectively engaged for the complainants and defendant in this cause; that Joseph Harris, Robert I. T. Wilson, Joseph Nevitt, William Yeaton, Edward Sheehy, and John Douglass, and Reuben Johnston, (some of the witnesses introduced as aforesaid by the said defendant, William H. Irwin,) severally and respectively subscibed in our presence the said depositions by them respectively given, and made oath, in due form of law, that their said several depositions, as given, contained the truth to the best of their knowledge and belief; that John H. Janney, a witness, also introduced by the said defendant, after having been examined in chief, in the course of his cross examination, asked to be excused for that day to afford him the opportunity of attending to some private and important business in Washington city, on Monday morning, the 28th day of April, 1845, in which request he

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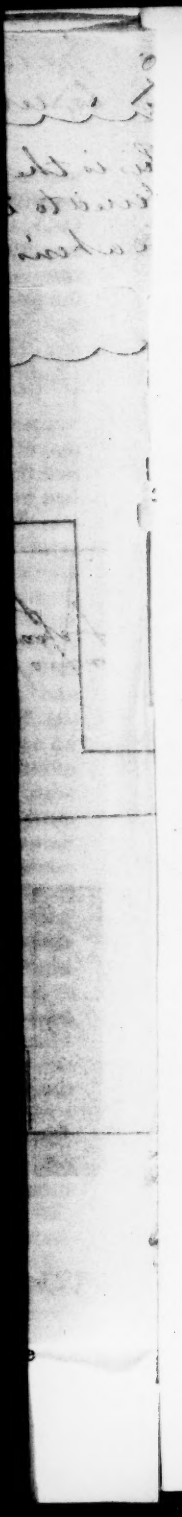

was indulged by the said commissioners, with the consent of the parties respectively by their counsel; and that since the said 28th day of April, 1845, the said John H. Janney has not again appeared before the said commissioners, nor was he sworn before his examination aforesaid was commenced; that John Howard, another witness, also introduced by the said defendant, Wm. H. Irwin, on Friday the 9th day of May, instant, was partly examined in chief, and detained until the close of the day, (Friday,) when the commission was adjourned over to this day, (Saturday,) the 10th day of May, 1845; that on Saturday, at 4 o'clock, P. M., according to the previous adjournment, the said John Howard again attended at the office of Joseph Eaches aforesaid, that being the mayor's office, in order that his aforesaid examination might be then and there resumed; that at that time the counsel engaged in this cause had not met according to the previous adjournment, (having been detained at the circuit court then in session,) and the said John Howard, complaining of being sick, left the mayor's office, and did not afterwards appear before the said commissioners for his further examination in the premises, his examination in chief not having been completed; that so much of his deposition as was taken has not been sworn to, nor is it subscribed by him, and at 6½ o'clock, P. M., the said commissions to us directed were closed. And we do further certify, that the continuance of taking the said depositions during each day of the present week, that is to say, since Saturday the third day of May, instant, was under an agreement entered into before us on the first day of this present month, between the counsel for the parties, complainants and defendants, in this cause; that the continuance of taking the said depositions during the present week should not in any manner interfere with the written agreement on file in said cause, "that the same should be set down for argument at the present term of this court," and that, at the closing of said depositions on this day, the case should stand as if the taking of said depositions had been concluded on Saturday the aforesaid third day of May, instant, and before the first day of the session of the circuit court of the United States for the county of Alexandria.

And we do further certify, that we are not, nor is either of us, counsel or attorney for either or any of the parties to this suit in the caption mentioned, nor are we, nor is either of us, interested in the event of the cause. And we further certify, that the costs of taking the said depositions hereto attached are forty-two dollars.

All which is certified to the honorable circuit court of the United States, for the county of Alexandria, in the District of Columbia, under our hands and seals, this tenth day of May, in the year of our Lord one thousand eight hundred and forty-five.

JOS. EACHES, *commissioner*. [SEAL.]
B. HOOE, *commissioner*. [SEAL.]

[For plat Y see original. Page 278.]

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Joseph Eaches and John Grubb, gentlemen, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection in diligently examining John Howard, in behalf of William H. Irwin, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, between George O. and John A. Dixion against William H. Irwin, we therefore desire you, that at such time and place as you shall appoint, you assemble yourselves together, and the witness aforesaid, before you, or any two or more of you, that you call and cause to come, and diligently examine on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined him and taken his deposition as aforesaid, that you return the same to our said court, certified under your hands and seals, enclosed together with this writ.

Witness William Cranch, esq., chief judge of our said court, this 17th day of February, 1846.

CASSIUS F. LEE, *C. C.*

GEORGE O. and JOHN A. DIXION
against
WILLIAM H. IRWIN.

Deposition of John Howard taken before Joseph Eaches and John Grubb, justices of the peace in and for the county of Alexandria, in the District of Columbia, on the 17th day of February, 1846, at the mayor's office in the town of Alexandria, between the hours of sunset and sunrise, to be read on the hearing of the injunction suit now depending before the circuit court of the District of Columbia, for the county of Alexandria, in which George O. Dixion and John A. Dixion are complainants, and William H. Irwin is defendant; taken in pursuance of the annexed commission from the honorable the circuit court of the District of Columbia, for the county of Alexandria, to us, Joseph Eaches and John Grubb directed, and in conformity with the annexed notice.

John Howard, a witness produced by the defendant, of lawful age, having been first duly cautioned and sworn, deposeth and says:

See deposition forward.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Joseph Eaches, John Grubb, and Charles Scott, gentlemen, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection in diligently examining John Howard, in behalf of William H. Irwin, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, between George O. and John A. Dixion vs. William H. Irwin, we therefore desire you, that at such time and place as you shall appoint, you assemble yourselves together, and the witness aforesaid, before you, or any two or more of you, that

Answer. I believe not.

7th. How near to the east front wall of said Dixion's warehouse were the articles, referred to in your answer to the 5th interrogatory, piled up?

Answer. The pile of anchors, &c., was upon the then eastern edge of the said space, and occupied a width of about, I should say, six feet. The piles of firewood occupied much more space; I can't say exactly how much. The width of said space between the warehouse and river is, I believe, more than 40 feet; and an ample passage for carts, &c., would be left, besides the room occupied by the anchors, &c., and firewood, I have mentioned.

8th. Is there any pavement along the eastern front of Dixion's warehouse; what is the extent of such pavement, if any; when, and by whom, was the same made?

Answer. There is a paved foot-walk there, about four feet wide. I do not know by whom it was made.

9th. What person or persons, if any, and how often, have you ever seen pass over said pavement, and the space of ground adjoining and to the east thereof?

Answer. I cannot call to mind many particular persons as having passed over said pavement and ground. I have often passed over them myself.

10th. What number of persons have you ever seen pass over said pavement and space of ground; have you ever seen vehicles, and what kind, and how many, stand upon, and pass over, said space of ground?

Answer. I have seen many persons pass over said pavement and space at different times; I have seen carts, drays, and other vehicles, pass over and stand upon said space.

11th. Was the use of, and passage over of, said space of ground by said persons, carts and drays, and other vehicles, confined to any particular season of the year, or to any specified hours—day or night?

Answer. I believe not.

12th. In what respect did such use of, and passage over, said space of ground differ from the use of, and passage over, a public street?

Answer. I can't say easily in what respects they differed. The foot passengers walked over the said space upon their legs as they would over the streets, and the vehicles passed over it upon wheels, as they generally do over all other ground.

13th. Have you or not ever seen any of those owning said warehouse, previous to complainants, present when the persons and vehicles, above referred to, were passing over said space of ground; and whether or no have such owners attempted to restrain such persons and vehicles from passing over said space of ground?

Answer. I cannot say; never having noticed the passage of persons or vehicles when I was there with any of such owners.

14th. Whether or no was the said space of ground used as a public highway previous to the erection of the wooden house spoken of in your answer to complainants' 5th interrogatory?

Answer. I think not; there are, in my opinion, no public highways in Alexandria, excepting the streets, and such other spaces of ground as may have been laid off by individuals as such by deed.

Examination by defendant resumed.

1. State for what uses and purposes the wharves and wharf property in Alexandria are commonly used; whether or no it could be so used unless access were left open to it?

2. State whether any, and what, use has been made of the wharf property to the east of said warehouse of the Irwins. Whether or no do any and what vessels, packets, or steamboats, stop at said wharf?

1. Answer. The wharves and wharf property in Alexandria are commonly used for shipping to moor at, and to receive, and unlade, their cargoes. I do not think the wharves could be conveniently or profitably used without open access to them.

2. Answer. The wharf property to the east of said warehouses is used for the purposes before mentioned. All kinds of vessels, usually navigating the Potomac river and the sea stop there, and receive and discharge their cargoes and passengers.

3. Whether or no any and what steamboats or vessels, and how many in general, stating as accurately as you can, lie at, and receive, or land goods and passengers on said Irwin's wharf?

4. Whether or no, from the peculiar nature of such property, the number of persons passing over said space is increased or diminished; and whether or no many or few of the persons seen by you passing on said space were, or were not, or might, or might not, have been engaged in business on said wharf?

5. For what privilege is wharfage paid?

3d answer. One of the Washington steamboats lands there, making several trips to and from the same daily, every alternate week; formerly every day; the mail boat to Aquia creek, from Washington, arrives and departs therefrom twice a day. These boats land and receive thereat a great many passengers and considerable merchandise. Sea vessels, and bay and river craft, are continually arriving there, and landing and receiving their cargoes. I can't state the number of them.

4th answer. I believe the commodiousness of such property is materially increased by having ample room for access thereto from the streets, and the number of passengers over the same is increased by the same cause. I have no doubt that many of the persons I have seen passing over the said space of ground, were passing to and from the said wharf on business thereupon, or were going to or from the steamboats.

5th answer. Wharfage is paid for the privilege of landing upon the wharves, and receiving therefrom the cargoes of vessels.

6th. Whether or no would wharf property be available for that purpose to any and what extent, unless the privilege of removing said cargoes was accorded?

6th answer. I do not believe a wharf in Alexandria would be worth

the taxes, unless used for such purpose and possessing such privilege, as I have never heard of passengers paying toll for passing over them.

7th. Whether or no are there any and what publicly acknowledged ways or streets by which communication may be had from the wharves with the streets of Alexandria; and whether or no it is necessary to pass over the said open space in order to reach any other wharf besides Irwin's.

7th answer. All the wharves at the east end of the streets of Alexandria are conveniently accessible from and by the streets; some of those lying between the streets are accessible by alleys laid off by the proprietors of the ground by contract, running to them from Union street; and others by open spaces connecting with the said streets and alleys, and laid off by the proprietors of the ground in like manner. The greater part of the wharves are accessible by spaces of ground left open for that purpose by their owners. It is not necessary to pass over the said open space to reach any wharf in town except Irwin's.

Cross examination by complainants resumed.

1. How many passways are there from Irwin's wharf into the town of Alexandria? Describe them.

Answer. There are two directly communicating with it over the said space of ground, viz., King street on the north, and a wide alley, called Dock street, on the south.

2d. Whether or no do the passengers, arriving and departing in the steamboats which you say stop at Irwin's wharf, pass over said space of ground in front of Dixion's warehouse in entering and leaving the town of Alexandria?

Answer. They do.

Further deponent saith not. R. JOHNSTON.

The further taking of depositions under the commission hereto attached is postponed until Thursday morning next, at 10 o'clock, at the mayor's office in Alexandria. Tuesday, 29th April, 1845, 6 o'clock, P. M.

B. HOOE,
JOS. EACHES,
Commissioners.

Thursday morning, May 1st, 1845. The commissioners again met at the mayor's office pursuant to adjournment, and proceeded in taking depositions in this cause.

Thursday evening, 6 o'clock, May 1st, 1845. This commission is adjourned until Saturday morning next, at the mayor's office, at 10 o'clock, A. M.

JOS. EACHES,
B. HOOE,
Commissioners.

Saturday morning, May 3d, 1845. This commission is again opened at the mayor's office, at 10 o'clock, A. M., according to adjournment, when the taking of depositions in this cause is resumed.

Saturday, May 3d, 1845. Adjourned until Monday next, at 4 o'clock, P. M.

B. HOOE,
JOS. EACHES,
Commissioners.

Monday evening, May 5th, 1845. The commissioners met at the mayor's office, at 4 o'clock, P. M., pursuant to adjournment, and proceeded to take depositions in this case.

Adjourned at 6½ o'clock, P. M., until to-morrow evening at 4 o'clock.

JOS. EACHES,
B. HOOE,
Commissioners.

Taking depositions resumed in pursuance of the above adjournment at the mayor's office, at 4 o'clock, P. M., Tuesday, May 6, 1845.

Adjourned at 6½ o'clock, P. M., until to-morrow evening, at 4 o'clock, at the mayor's office. Tuesday, May 6th, 1845.

JOS. EACHES,
B. HOOE,
Commissioners.

Wednesday evening, May 7, 1845. The commissioners again met pursuant to adjournment, and resumed the examination of witnesses in this case.

Adjourned at 6½ o'clock, P. M., on Wednesday, May 7th, 1845, to meet again on Thursday evening at 4 o'clock, at the mayor's office.

JOSEPH EACHES,
B. HOOE,
Commissioners.

Thursday, May 8. The commissioners again met pursuant to adjournment, at the mayor's office.

Adjourned until to-morrow, (Friday,) at 4 o'clock, at the mayor's office.

B. HOOE,
JOS. EACHES,
Commissioners.

May 8th, 1845.

Friday evening, May 9th, 1845. The commissioners again met at the mayor's office, pursuant to adjournment, and proceeded to take depositions in this cause.

Friday, 6½ o'clock, P. M., May 9th, 1845. Adjourned until to-morrow evening, (Saturday,) to meet again at the mayor's office, at 4 o'clock, P. M.

JOS. EACHES,
B. HOOE,
Commissioners.

Saturday, May 10th, 1845. The commissioners again met at the mayor's office, at 4 o'clock, P. M., pursuant to adjournment, and proceeded in taking depositions in this cause.

you call and cause to come, and diligently examine on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined him and taken his deposition as aforesaid, that you return the same to our said court, certified under your hands and seals, enclosed together with this writ.

Witness William Cranch, esq., chief judge of our said court, this 23d day of September, in the year of our Lord 1845.

CASSIUS F. LEE, *C. C.*

DISTRICT OF COLUMBIA, *Alexandria county:*

This day personally appeared before the subscriber, a justice of the peace in and for the county aforesaid, William Devaughn, and made oath in due form of law that he served a copy of the within notice on George O. and John A. Dixion, on the 17th day of September, 1845.

Given under my hand this 17th day of September, 1845.

R. JOHNSTON, *J. P.*

Messrs. George O. and John A. Dixion:

You are requested to take notice, that on Wednesday, the 24th day of September, 1845, at the mayor's office in the town of Alexandria, between the hour of 9 o'clock, A. M., and seven o'clock, P. M., I shall proceed to take the deposition of John Howard, to be read on the hearing of the injunction suit now depending before the circuit court of the District of Columbia, for Alexandria county, wherein I am defendant and you are complainants; and should the same not be taken as above for any cause, the same will be continued at such other time as may be designated by the commissioners.

W. H. IRWIN, *Deft.*

Sept. 17, 1845.

Deposition of John Howard.

DISTRICT OF COLUMBIA,
Alexandria county, to wit:

GEO. O. DIXION and JOHN A. DIXION
vs.
WILLIAM H. IRWIN.

Deposition of John Howard, taken *de bene esse* before Joseph Eaches and John Grubb, two justices of the peace in and for the county of Alexandria, in the District of Columbia, on Wednesday, the 24th day of September, 1845, at the mayor's office in the town of Alexandria, between the hours of 9 o'clock, A. M., and seven o'clock, P. M., and by adjournment as stated in the body of the deposition, to be read on the hearing of the injunction suit now depending before the circuit court of the District of Columbia, for Alexandria county, in which George O. Dixion and John A. Dixion are complainants, and William H. Irwin is defendant. Taken in pursuance of the annexed commission from the honorable the circuit court of the District of Columbia,

for the county of Alexandria, to us, Joseph Eaches and John Grubb directed, and in conformity with the annexed notice given by the defendant in this cause to the plaintiff in the same: taken because the said Howard being a single witness to a material fact for the defence of the defendant.

John Howard, a witness produced by the defendant, of lawful age, having been first duly cautioned and sworn, deposeth as follows:

In answer to the 1st interrogatory by the defendant's counsel—

I am. It belonged to the heirs of Thomas Irwin when I first rented a part of it.

Answer to 2d interrogatory. To William H. Irwin, Ann J. Carey, and Elizabeth Irwin; the part that Elizabeth Irwin now owns formerly belonged to James Irwin.

Answer to 3d interrogatory. I have been in possession of the house now occupied by George O. Dixion, the house to the south of it belonging to Ann J. Carey, and the wharf property from the walls of the two buildings east as far as it extends. I was put in possession of the said wharf property, extending northwardly as far as King street; extending south as far as the middle of Dock street, or Dock alley; extending eastwardly as far as the pier to the river Potomac, by William H. Irwin. I first held it under a lease for two years, commencing 26th June, 1841, and ending 26th June, 1843. I kept possession of said wharf property the third year upon the same terms as the first two years, though without a lease; the lease included the house that George O. Dixion now occupies; the third year I occupied the house under a verbal bargain with George O. Dixion—Wm. H. Irwin stating to me, after I had rented the house of said Dixion, that so soon as my term expired, he intended stopping up the passway out of the house on to the wharf.

4th interrogatory. Answer. I finally gave up said wharf property in April, 1845, about the 6th of the month; the terms on which I held it, when I surrendered it, were as follows: a rent of six hundred and twenty-five dollars per annum, if that sum could be made by receiving or collecting wharfage; upon which terms I held it from the 26th June, 1844, until April, 1845, as before stated. Prior to the 26th of June, 1844, I held said property at a rent of six hundred and twenty-five dollars, without such condition as from June, '44, to April, '45.

Answer to 5th interrogatory. I exercised full authority over said *said* property; no other person claimed any authority. I claimed it and used it. The authority claimed and exercised by me was over the whole property rented, which included the house now occupied by George O. Dixion, the house owned by Ann J. Carey, and the ground east of said houses extending in the river Potomac to the east end of the wharf. I shew my authority by driving off hacks, driving off drays and carts, to prevent the horses from cutting up the wharf and wharf property. I repaired the wharf property by having dirt put in the holes made by horses, drays, and carts, and washing by rains; such repairs at different times, while I was in possession of the property, required between two and three hundred cart loads of earth.

Answer to the 6th interrogatory. No person at any time resisted such authority; when I ordered persons off they went forthwith without any resistance. Neither the superintendent of the police, nor any other person, claimed any such authority, nor mentioned to me the subject of repairs during the time I occupied said property. The superintendent of police put no repairs on said property while in my possession, nor were any repairs put upon it except such as I put on or had done.

Answer to the 7th interrogatory. The said lot was never used by any person other than myself during the time of my renting and leasing, as far as I have any knowledge, though it may have been used by others. I used it in every way except building a house on it. I used it for piling of wood, landing grain, and landing every kind of produce that is usually landed upon a wharf. I used it for piling wood on. I piled wood on said lot, but did not stop up the foot passway; am not certain whether or not I stopped up the cart passway on the south, but know I did not stop up the cart passway on the north. I piled wood at the various times on all of said lot, except before the door of the warehouse now occupied by George O. Dixion, and that omission for my own benefit. I piled wood before the door of the adjoining warehouse on the same lot. I exercised such authority prior to the suit now pending, and continued to do so thereafter.

Answer to the 8th interrogatory. I received wharfage and dockage during the time I occupied said property, and no other person or persons did, unless my son did with my consent, he acting as my clerk. The person paying wharfage has the right to land goods upon which he pays wharfage, and to haul away such goods; he obtains no other right. The person paying dockage has a right to lay his vessel long side of the wharf, and to pass to and from the vessel.

Answer to interrogatory 9th. The effect on the value would be very great; it would not be worth one-twentieth as much; it could not be rented.

Answer to 10th interrogatory. It has certainly been left unenclosed for the benefit of the occupier. The footway and the passway for carts were kept open for my benefit.

Answer to 11th interrogatory. It never was in contemplation by me.

Answer to 12th interrogatory. If it were absolutely shut up it would not be worth the twentieth part of what it now is.

Answer to the 13th interrogatory. I have seen a fence on the said wharf property; and that fence, (which I presume is the fence in controversy in this suit, as I have seen no other fence there,) was put there while I was in possession of the warehouse now occupied by George O. Dixion.

Wednesday, Sept. 24th, 1845, half-past 1 o'clock. We hereby adjourn the further taking of this deposition until seven o'clock this evening, when it will be resumed and continued, at the same place as commenced.

JOS. EACHES,
JOHN GRUBB,
Commissioners.

Wednesday evening, Sept. 24th, 1845, 7 o'clock, P. M., taking of this deposition resumed.

Answer to the 14th interrogatory. The said fence did not exclude the light from either of the windows of said Dixions' warehouse; the first post was planted about a foot from the northern edge of the south window, in the east end of the house; the fence ran out a distance of about thirty feet east; then running south about thirty feet; thence running west to within one inch of Ann J. Carey's warehouse; which fence enclosed nearly or quite one third of the eastern front of the two warehouses; such a fence could not have obstructed the light of the window of said Dixions' warehouse. There were no window shutters on said windows when the house was purchased by said Dixion, nor when said fence was put up, but there were iron bars. The said Dixion went to work repairing the house as soon as I gave him possession; and the fence was put up the day before I gave him possession.

Answer to the 15th interrogatory. The said space enclosed was used by me when I occupied said wharf property, as I used any other portion of the wharf or property.

Answer to the 16th interrogatory. The shantee was built by me, by the orders of William Irwin, for my use; after the building of the fence, I was in possession, having possession of the whole wharf property, being engaged at the time in purchasing wood. The shantee is not now standing.

Answer to the 17th interrogatory. I have, and do now, consider it wharf property from the warehouses to the east end of the pier.

Answer to the 18th interrogatory. Such property is considered private property.

Answer to the 19th interrogatory. I have never heard it considered, or called, or claimed, as public property by any body. I never heard it spoken of as a public street.

Answer to the 20th interrogatory. I never did; I never heard it claimed, nor did I ever know of the existence of a public street over the ground named.

Answer to the 21st interrogatory. I know of no other than Messrs. McVeighs', running from Union street eastwardly, upwards of 100 feet, extending in an eastwardly direction from 18 to 20 feet, beyond the former front of said McVeighs' warehouse.

Answer to the 22d interrogatory. It was situated very much as the property now in dispute between the parties in this cause; the carts and drays passed pretty freely until Messrs. McVeighs built their new warehouse, and they now pass again since they have filled up a portion of the dock, which enables the carts and drays to pass as before, though the space is narrower than the original; a portion of the warehouse now covers a portion of the open space before used for the passage of the carts and drays. There is less room between Messrs. McVeighs' warehouse and the dock than was left between the fence, on Irwin's wharf, and the dock.

Answer to the 23d interrogatory. I have never heard of any such objection.

Answer to the 24th interrogatory. There were one door and three windows, on King street, on the lower floor; the number of windows on the second floor I do not recollect, but think there were four; I am sure there were four and three dormant windows in the roof. The changes on King street have been to substitute three doors for the three windows on the ground floor, making now four windows in all on the ground floor. I know of no other change on King street side of said house. In the east end on that fronting the river, there were two windows and one door on the ground floor; a window in each corner, and a door in the middle, or equi-distant from each window. In the second story, the windows and door were situated as below; being exactly over those below, and the same in number. In the third story, or garret end, there was one door and two windows. The changes made have been on the lower floor, to put a door where the north corner window was, and a window where the door was, and making the south window a little larger than the old window; on the second floor a window has been put in the place of the door; these are all the changes that I recollect.

Answer to the 25th interrogatory. When I occupied said building, and gave it up, the counting room was in the northeast corner; it has since been changed, and placed in the southeast corner; the change has been made since the erection of the fence aforesaid.

Answer to the 26th interrogatory. There was a pavement there of about four feet wide when I took possession of the property; and I afterwards put one down of about four feet more, making the whole width about eight feet; the first pavement extended from King street to Dock street, or alley; the second, or part that I put down, extended in the same direction, parallel with the other, about ten feet in front of the door of the house then occupied by me, and now occupied by George O. Dixion. The whole pavement was for the use and benefit of the occupant of the house; the portion put there by me I sold to the said George O. Dixion.

Answer to the 27th interrogatory. I have talked with one of the complainants, George O. Dixion; he appeared to be very careless about it; said he would rather, of course, have the use of the passway out of the east end of the building to the wharf; but, if he lost the suit, the loss of the light would make very little difference, as he could use a skylight from above.

Wednesday, September 24th, 1845, 9 o'clock, P. M. We hereby adjourn the further taking of this deposition until to-morrow at 9 o'clock, A. M., then to be resumed at the same place.

JOS. EACHES,
JOHN GRUBB,
Commissioners.

Sept. 25, 9 o'clock, A. M. The commissioners again met according to adjournment, opened the commission, and remained until ¼ past 12 o'clock, when, in consequence of the witness, John Howard, not

having appeared, we adjourned until to-morrow, the 26th of Sept., then to meet at the same place, at the hour of 9 o'clock, A. M., and resume the taking of said Howard's deposition.

JOS. EACHES,
JOHN GRUBB,
Commissioners.

Friday, the 26th September, 1845. The commissioners again opened at the same place, at the hour of 9 o'clock, and examination of witness resumed.

Interrogatory 28 put to witness.

Answer to the 28th interrogatory. I know nothing, nor can I set forth anything material to either party.

Further this deponent saith not.

JOHN HOWARD.

Commission closed ¼ past 11 o'clock on the 26th of September, 1845.

JOS. EACHES,
JOHN GRUBB,
Commissioners.

W. H. IRWIN,
ads.
GEO O. & J. A. DIXION.

Interrogatories to be administered to John Howard, a witness produced and sworn on behalf of the defendant.

Interrogatory 1. Are you acquainted with the block of warehouses and wharf property included between King and Union street, Dock alley, and the river Potomac? To whom does it belong?

2. To whom does that part belong which extends from the eastern ends of the warehouses, now owned by Ann J. Carey and the complainants, to the river Potomac?

3. Whether or no have you ever been in possession of any and what portion of said property; and from whom did you rent it? Whether or no did you ever hold any portion of said property under a lease, or how otherwise? If so, when did said lease expire?

4. Whether or no did you keep possession of said wharf property after its expiration? If so, under what terms, and how long; and when did you finally surrender up the said wharf property; and on what terms were you then holding it?

5. Whether or no did any, and what, person claim or exercise any, and what, authority over the said wharf property, or over any and what portion of it in particular, and in what mode and when in particular; and by what acts was said authority, or claim of authority, manifested?

6. Whether or no did any person resist the exercise of such authority, and if so, when, and by whom, was such resistance made? And whether or no did the superintendent of police, or any other and what person, claim any authority, or put any repairs, on said wharf property, and if so, when?

1325.

7. Whether or no has the said open lot between the warehouses and the river been used by any person or persons, and by whom, and in what manner, and for what purposes, and to what extent?

8. Whether or no has any and what person or persons received and collected wharfage or dockage from said property; and what privilege is therefor obtained by persons paying such charges?

9. If said wharf property between the warehouses and the river were not used for such purposes, what would be the effect on its value?

10. For what purpose has the said wharf property, and the footway, and the room for carts, &c., been left open?

11. Whether or no was it ever in the contemplation of any possessor of said property to inclose it?

12. If it were absolutely shut up, what would the wharf property be worth?

13. Have you ever seen a certain fence on the said wharf property? If so, state when it was put there, and who was in possession of Dixions' warehouse at the time.

14. Whether or no did the said fence exclude the light from either of the windows of said Dixions' warehouse in any and what degree? Describe the said fence. Whether or no were there any window shutters on the said window when the house was purchased by said Dixion, or when the said fence was put up? When were window shutters first put up on the east end of said house?

15. Whether or no has the space, inclosed by said fence, been used by any and what person or persons, and for any and what purposes?

16. By whom was the shantee erected within the line of said fence, and for whose use? Was it erected before or after the building of the fence? Who was then in the possession of the space on which it was built; and whether or no is said shantee now standing?

17. What species of property is the open space between the warehouses and the river considered in Alexandria?

18. Whether or no is the property of that kind, similarly situated with the open space in controversy, considered in said town as public or private property?

19. Whether or no did you ever hear the space aforesaid, prior to the present suit, claimed, or spoken of, by any and what person or persons, as a public street, or as belonging to the public?

20. Whether or no did you ever hear or know of the existence of a public street or highway over the open space between the eastern ends of the warehouses and the river, and between King street and Prince street, or over any part of said space, prior to this suit?

21. Whether or no have you known of any building or warehouse being erected on any portion of said space between King street and Prince street; and if so, by whom, and when was it built, and describe its position?

22. If any, what was the condition of the space in front of the old house, prior to the erection of the new one; and in what did it differ from the one in dispute?

23. Whether or no has their right so to build on their open space been objected to?

24. Describe the house now owned by the Dixions as it was when they purchased it; how many windows and doors had it on the eastern end, and what was their relative position; and whether or no have any and what changes been made in the relative position of the doors and windows in said east end; and whether or no said changes are of a permanent or temporary character?

25. Where was the counting-room in said building when you occupied it and gave it up; end whether or no has any and what change been made in its position; and whether before or since the erection of the said fence?

26. Whether or no was there any pavement at the east end of the house when you first occupied it; how broad was it; and for whose use and accommodation was it placed there; whether or no any and what alteration was made in it, and by whom; whether or no was any and what disposition made of said pavement when you gave up the property, and to whom?

27. Whether or no did you ever have any conversation with the complainants, or either of them, respecting the matters in controversy? If so, state its contents.

28. Do you know, or can you set forth, any other matter which may benefit either of the parties in this suit, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

DISTRICT OF COLUMBIA,
Alexandria county, to wit:

We, Joseph Eaches and John Grubb, justices of the peace for the county aforesaid, do hereby certify, that the foregoing deposition of John Howard was taken *de bene esse* before us, in the manner, at the place, at the time, and for the purpose stated in the caption. The interrogatories which are in the handwriting of the defendant's counsel, were read over by us to the deponent, and his answer committed to writing by one of us; after carefully reading the interrogatories and answers to the deponent, he signed the same in our presence. We furthermore certify, that the complainants did not appear either in person or by counsel, and that the defendant appeared by counsel.

We further certify, that we are not either of us counsel for either party, nor are we in any way, directly or indirectly, interested in the result of this suit. Given under our hands and seals this 26th day of September, 1845.

JOS. EACHES, [SEAL.]
JOHN GRUBB, [SEAL.]
Commissioners.

Cost of taking the foregoing deposition twelve dollars.
$12
JOS. EACHES,
JOHN GRUBB.

1326.

Messrs. Geo. O. Dixion and John A. Dixion:

You will take notice, that John Howard, being a seafaring man, and about to leave Alexandria on a voyage on Wednesday or Thursday next, I shall proceed to take his deposition on Tuesday, the 17th of February, 1846, at the mayor's office in Alexandria, between the hours of sunrise and sunset, to be read in evidence in the injunction suit, now depending before the circuit court of the District of Columbia, for Alexandria county, wherein you are complainants and I am defendant, and if not completed on that day, it will be continued from day to day till it is finished.

Feb. 14, 1846. W. H. IRWIN.

ALEXANDRIA COUNTY, *to wit:*

This day George Johnson appeared before me, in Alexandria county, and made oath in due form of law that he served the within notice on George O. Dixion and John A. Dixion, on the 14th Feb., 1846, in the forenoon. Sworn to before me this 14th day of Feb., 1846.

CHAS. McKNIGHT, *J. P.*

Cross examined by complainants' counsel.

No. 1. Have you or not ever known the ground between the north east corner of Dixion's warehouse and the end of the adjacent dock so obstructed as to prevent persons with horses, carts, carriages, drays, &c., from passing?

Answer. I have.

Question 2. When and in what manner?

Answer. During part of the winter of 1844–'45, when it was occupied with wood in such manner as to prevent the passage of horses and drays.

Question 3. Have you ever known said space obstructed prior to the periods mentioned?

Answer. Not entirely obstructed so as to prevent the passage of horses and drays.

Question 4th. How long have you known the warehouse property owned by said Dixions above referred to; has there ever been any fence, bar, or enclosure over the ground between the eastern front of said warehouse and the river Potomac, before the erection of the fence or enclosure alluded to in your answer to the 13th interrogatory?

Answer. I have known it since the year 1817; I think there was not to my recollection any fence, bar, or enclosure over the ground alluded to, before the enclosure mentioned in the 13th interrogatory, but there has been plenty of wood piled on the wharf to the east end of the warehouses; I have piled it myself and seen others pile it. I intended several times to enclose it, to prevent horses or any thing from passing by or cutting up the wharf; I was so ordered to do by the owners of the property, and promised them to do it.

Question 5. What portion of the property did you intend to enclose?

Answer. I intended to enclose the whole of the wharf; what I consider-

ed the wharf was from the east end of each warehouse, extending east out on the wharf as far as the wharf extends, and as far upon Dock street as my line extended, which I considered as far as the edge or south side of Mr. Carey's warehouse. I intended to embrace the whole of the wharf in front of Irwin & Carey's warehouses; I having rented the two warehouses, I intend running fences, one from the northeastern corner of Irwin or Dixion's warehouse, and the other from the southeastern corner of Carey's to the dock, enclosing the whole of the wharf.

Question 6. Have you seen any person or persons with or without horses, drays, carts, and carriages, prior to the erection of said fence, standing upon or passing over the space of ground in front of said Dixion's warehouse; whom, when, and how often?

Answer. I have seen horses, and drays, and hacks standing, and I have driven them off; I have seen a good many people passing on foot; they did not appear to injure the premises by walking over it, or I should have tried to prevent them; as to the number of persons I cannot pretend to say; I have been very much aggravated at horses, drays, and hacks standing on the premises, and cutting up the wharf.

Question 7. Did you or not drive off all the hacks, drays, and horses which you saw on said space of ground whilst you occupied the warehouse owned by said Dixions, or did you drive off only such as injured the property?

Answer. I only drove off such as were injuring the property by stamping on it; when they came for wood I did not drive them off.

Question 8. Did you or not, during your occupation of said warehouse, ever see any person or persons with horses, hacks, and drays, or either, standing upon, or passing over said space of ground, besides those having business with you?

Answer. Yes.

Question 8. Was any person prohibited from standing upon or passing over said space of ground since you have known the same; who, when, how often, and by whom?

Answer. I never knew any person other than myself to prohibit any persons from standing upon or passing over said space. I ordered off hacks belonging to Messrs. Chatham & Cross, and drays and carts belonging to others, and horses cutting up the wharf; the date I cannot recollect.

Question 9. Why did you order off such hacks, drays, and horses?

Answer. I ordered them off to prevent their stamping and cutting up the wharf.

Question 10. During your occupancy of said warehouse, did you use the upper stories thereof, and for what purpose; was there any mode or fixtures, and what, on the outer side of said warehouse for raising merchandise to the upper stories?

Answer. I used the upper story of the warehouse I occupied on King street; the purchase for hoisting goods was inside; I used the lower story of the adjoining warehouse, belonging to Mr. Carey, for stowing goods.

Question 11. Was there any purchase or other fixture in the eastern front of Dixion's said warehouse for raising merchandise to the upper stories?

(Excepted to by defendant.)

Answer. There was no purchase or other fixtures there to hoist goods with during the time I occupied said warehouse.

Question 12. Was there or not one or more pieces of timber projecting from the eastern front wall of the said warehouse, to be used for the purposes mentioned in the last interrogatory?

Answer. There was a piece of timber projecting from the wall of the eastern end of said warehouse, that I think it probable was put there for such purpose; I presume it was, but I have never seen it so used.

(The question and answer excepted to by defendant.)

Question 13. Through which front entrance of said warehouse was the greater part of the business done during your occupancy thereof?

Answer. I cannot say which; we had more passing in and out at the end, or east door.

Question. On what day did you deliver possession of said warehouse to the Dixions?

Answer. I do not recollect.

Further this deponent sayeth not.

JOHN HOWARD.

I hereby waive all exception in point of form to this deposition, but specially except to all the defendant's interrogatories because they are leading, irrelevant, and otherwise illegal; and also except to the answers to the said defendant's questions, because the witness makes hearsay statements, introduces irrelevant matter, and because said answers are otherwise illegal.

FRANCIS L. SMITH,
Counsel for complainants.

DISTRICT OF COLUMBIA,
Alexandria county, to wit:

We, Joseph Eaches and John Grubb, justices of the peace in and for the county aforesaid, do hereby certify, that the foregoing deposition of John Howard was taken by us in the manner and at the place stated in the captions, that is to say, the examination in chief was taken at the mayor's office in Alexandria, on the 24th day of September, 1845, between the hours of 9 o'clock, A. M., and 7 o'clock, P. M., and by adjournment as stated in the body of the deposition; the cross examination at the same place on the 17th day of February, 1845, between the hours of sunrise and sunset. The cross interrogatories are in the handwriting of the plaintiffs' counsel; they were read by one of the undersigned to the deponent, whose answer was committed to writing by one of the undersigned, and the deposition signed by the deponent in our presence.

We further certify, that at the time of taking the cross examination, Francis L. Smith, counsel for the plaintiffs, and Henry W. Davis,

counsel for the defendant, were present; and that in order to save the labor of a second examination in chief, Francis L. Smith, after mature deliberation, having had the deposition of 24th September in his possession for some hours, agreed that it should be taken as the examination in chief, he waiving all exception thereto as to time, manner, or form, with the right to cross examine the deponent, and to file the foregoing exception; and under that agreement between the counsel, said examination is now certified into your honorable court as a part of the deposition of John Howard.

We further certify, that neither of us are interested directly or indirectly in the result of this suit.

Given under our hands and seals, this 17th day of February, 1846.

JOS. EACHES, [SEAL.]
JOHN GRUBB, [SEAL.]
Commissioners.

Cost of taking the cross examination four dollars; and cost of the examination in chief as before stated, twelve dollars.

Chief $12 JOS. EACHES,
Cross ex. 4 JOHN GRUBB.

Total $16

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, greeting:

GENTLEMEN: Know ye, that we, trusting to your fidelity and provident circumspection in diligently examining John Janney and others, in behalf of William H. Irwin, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, between George O. and John A. Dixion and William H. Irwin, we therefore desire you, that at such time and place as you shall appoint, you assemble yourselves together, and the witnesses aforesaid, before you or any two or more of you, that you call and cause to come, and diligently examine on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined them, and taken their depositions as aforesaid, that you return the same to our said court, certified under your hands and seals, enclosed together with this writ. Witness William Cranch, esquire, chief judge of our said court, this 21st day of February, in the year of our Lord 1846.

CASSIUS F. LEE, *C. C.*

Messrs. GEORGE O. DIXION & JOHN A. DIXION.

You will please take notice, that on the 23d day of February, 1846, at the mayor's office, in the town of Alexandria, between the hours of sunrise and sunset, I shall proceed to take the depositions of George H. Smoot, Phineas Janney, John Janney, John Howard, and others, to be read in the hearing of the injunction suit now depending in the circuit court of the District of Columbia, for Alexandria county, wherein you

are complainants and I am defendant; and if for any reason the said depositions should not be taken or completed on the above day, the same will be continued at such other times as the commissioners may adjourn to from time to time. W. H. IRWIN.

February 13th, 1846.

This day personally appeared before the subscriber, a justice of the peace in and for the county of Alexandria, and made oath in due form of law, that he served a copy of the above notice on Geo. O. Dixion and John A. Dixion, on the 13th day of February, 1846.

George Johnson appeared before, made oath this 13th day of February, 1846. Sworn before, CHAS. McKNIGHT, *J. P.*

GEORGE O. DIXION & JOHN A. DIXION,
vs.
WILLIAM H. IRWIN.

Deposition of John H. Janney,

Taken before Joseph Eaches and Reuben Johnston, two justices of the peace in and for the county of Alexandria, in the District of Columbia, at the mayor's office, in the town of Alexandria, on the 23d day of February, 1846, between the hours of sunrise and sunset, and at other times by adjournment from time to time, to be read in the hearing of the injunction suit now depending in the circuit court of the District of Columbia, for Alexandria county, wherein George O. Dixion and John A. Dixion are complainants, and William H. Irwin is defendant. Taken in pursuance of the annexed commission from the honorable the circuit court of the District of Columbia, for the county of Alexandria, to us, Joseph Eaches and Reuben Johnston directed, and in conformity with the annexed notice, given by the defendant in this cause to the plaintiffs in the same.

February 23d, 1846. The commissioners assembled at the mayor's office in Alexandria, at the hour of 9 o'clock, A. M., and by consent of the counsel for the complainants and defendant, adjourned to meet again on the 24th, next day, at the same hour and place.

JOS. EACHES,
R. JOHNSTON,
Commissioners.

February 24th, 1846. The commissioners assembled, and by consent of the counsel for the complainants and defendant, adjourned the commission to meet again on the 25th, next day, at the same place, at the hour of ten o'clock.

JOS. EACHES,
R. JOHNSTON,
Commissioners.

February 25th, 1846, 10 o'clock, A. M. The commissioners again met; present also Francis L. Smith, counsel for the complainants, and H. W. Davis, counsel for the defendant.

Deposition of John H. Janney.

John H. Janney, a witness of lawful age, having been before examined in part under a commission issued by the circuit court of the District of Columbia, for the county of Alexandria, directed to Joseph Eaches, Bernard Hooe, and Wm. N. Mills, justices of the peace in and for the said county of Alexandria, under date of the 25th April, 1845, authorizing them to take depositions in this suit, which examination commenced on the 26th day of April, 1845, and was suspended on the 28th day of the same month, and will be found by reference to pages 7, 8, 9, 10, 11, 12 and 13, in a volume of depositions taken by B. Hooe and Joseph Eaches, under said commission. It is now agreed between the counsel for the complainants and defendant in this suit, that so much of said John H. Janney's deposition as was taken under said commission of the 25th of April, 1845, shall be received and admitted as taken under the present commission; that the two portions of said Janney's deposition, that is to say, that portion taken under the former commission, with so much as shall be taken under this commission, shall form a whole, and have the same effect as though it had been completed under the former commission, or commenced under the present; and that no exception shall be taken by either party to the time of taking said examination.

The said John H. Janney having this day been duly sworn, in answer to the following interrogatories, deposes and says as follows:

Cross examination continued.

Question 7. Which side of Dixion's said warehouse was used as the front, before and at the time they purchased it, and through which lower door was the business of said house chiefly conducted?

Answer. That toward or fronting the wharf, that is, the gable end, before and at the time of said purchase. Before the said purchase the business was conducted through the front or eastern door. I think Messrs. Dixions have cut two additional doors since on the northern side of the said warehouse; but through which doors the principal business is now transacted I am unable to answer.

Question 8. Is there any fixture, purchase, or lever in, attached to, or extending from the eastern front wall of said warehouse; if so, describe it, and say when and by whom the same was there placed? (Question and answer excepted to by defendant.)

Answer. There is a fixture for a block for hoisting goods projecting from near the top of the eastern front; when placed there or by whom I cannot say.

Question 9. Was said fixture placed in the position you describe before said Dixions bought said property; and if so, how long, as nearly as you can arrive at the time; of what material is said fixture made; and how far does it extend beyond the front of said eastern wall.

(Question and answer excepted to by defendant as leading, and for other cause.)

Answer. It was so placed before the said Dixions bought the property; how long before I cannot say, though it was a long time, several years; said fixture is made of wood, and projects four or five feet I suppose, which distance it extends beyond the eastern wall.

Question 10. Before the obstruction alluded to in the foregoing part of your deposition was erected on the ground between the eastern front of said warehouse, and the Potomac river, did any and what number of persons, with horses, carts, drays, carriages, &c., ever pass over or stand upon said space of ground over which said obstruction is erected, and how did the number of persons, if any, thus with their horses, carts, drays, carriages, &c., thus using said space of ground, compare with the number of persons in the same manner passing over or standing upon the most public streets in the town of Alexandria? (Question excepted to by defendant.)

Answer. I cannot say how many persons with horses, carts, and drays, passed over said space of ground before the said obstruction was erected; any persons, drays, or carts, passed over the ground on which said obstruction was placed; but the obstruction did not prevent persons with horses, carts, and drays, passing over the adjacent ground afterwards, as far as I now recollect; before the "pen" was made, or obstruction placed on the ground, it was a public thoroughfare for carts, drays, wagons, and persons. In stating that persons, horses, carts, drays, &c., passed over the ground in front of the eastern end of the warehouse between it and the wharf, I mean to except the pavement immediately in front of the warehouse, which is or was designed for foot passengers.

Re-examination by defendant's counsel.

1. State to whom the wharf property to the east of the warehouses of Dixions and Carey belonged, and whether or no the said open space, extending from the houses to the water, is or is not a part of said wharf property; or if not, what kind of property is it?

Answer. The said property, by which I mean the wharf known as Irwin's wharf, belonged to the Irwins; the dock between Janney's wharf and Irwin's wharf belonged, I believe, two-thirds to the Irwins and one-third to Phineas Janney and Samuel M. Janney. When flour and other articles consigned to me have been landed on the ground claimed by the Irwins as their two-thirds, I have paid them the customary wharfage. Whether or not the said open space is or is not a part of said property I cannot say; my knowledge of law is not sufficient to enable me to form an opinion. I suppose the deed would establish the fact. There are a variety of opinions as to what kind of property it is; I am at a loss to say.

State whether any and what person or persons have occupied said open space or wharf property between the houses and the river, in connexion with any and what warehouses?

Answer. I suppose is meant by the word occupancy, the landing of flour on the ground adjacent to the dock, and carrying grain from the dock to the warehouse, or carrying flour or grain by drays from the

dock to the warehouse; it has thus far been occupied by the owners of the property.

State whether or no there were any doors or windows on King street prior to Dixions' purchase; and whether or no business could or could not have been conducted through said doors; and whether or no the entrance by the east end was absolutely essential to obtaining access to the house; and whether business to any and what extent was or was not carried on through said door on King street; and through which said Dixions now conduct their business?

Answer. There was one door and I think some windows; business could have been conducted through said door; the entrance by the east end was not absolutely essential to obtaining access to the house; business was generally done on the east front; goods were generally received and delivered through the east door; yet I have no doubt that goods were delivered through the door on the north or King street side, as suited purchasers; goods were sometimes sold to boatmen, and at others to wagoners. I do not know through which door the said Dixions conduct their business.

Whether or no prior to this suit had any public street been laid out over said ground adjacent to the dock aforesaid?

Answer. None.

Cross examination resumed.

How do you know that the Irwins owned the wharf property above spoken of?

Answer. I know it as I know any other persons own property, by the common reputation of owning; and also from their always having collected wharfage by themselves or through their agents, and the public admitting it to be theirs.

Question. Prior to the erection of the obstruction referred to, did vessels ever land at Irwin's wharf loaded with produce and other articles, belonging to, or purchased by persons other than the owners of the warehouses now said to be owned by said Dixions and Carey; if so, how was said produce and other articles conveyed to the owners thereof? (This question excepted to by defendant's counsel.)

Answer. Produce and other articles belonging to and purchased by other persons than the owners of the said warehouses, were landed at Irwin's wharf, or Irwin's and Janney's dock, and the produce and goods were conveyed as is usual from other wharves.

Further this deponent sayeth not.

JOHN H. JANNEY.

The complainants, George O. Dixion and John A. Dixion, by their counsel, except to all the interrogatories put by the defendant's counsel to the witness, John H. Janney, because they are leading, irrelevant, and otherwise illegal; and also except to the answers to said questions, because they are hearsay, irrelevant, and otherwise illegal.

FRANCIS L. SMITH,
Solicitor for complainants.

DISTRICT OF COLUMBIA,
Alexandria county, to wit:

We, Joseph Eaches and Reuben Johnston, justices of the peace in and for the county of Alexandria aforesaid, do hereby certify, that the foregoing deposition of John H. Janney was taken by us at the place and time and in the manner stated by us in the caption and body of said deposition. That the interrogatories put to the deponent this day were read by us to the deponent, and his answer committed to writing by one of the undersigned, after which they were read over in his hearing and signed by him in our presence. We further certify, that the counsel for the parties in this suit agree that such portion of said Janney's deposition as had been taken under the commission bearing date the 25th of April, 1845, before described, should be received and deemed as taken under the present commission; Francis L. Smith, counsel for the complainants, consenting to waive all exceptions as to the time of taking that portion of the deposition, under that agreement between the counsel for the parties in this cause. We now certify that portion, as well as what has been taken immediately under our notice, unto your honorable court as the deposition of John H. Janney, taken under the present commission.

We further certify, that neither of us are directly or indirectly interested in the result of this suit now depending between the complainants, George O. Dixion and John A. Dixion, and the defendant, William H. Irwin, and that neither of us is counsel for either party.

Given under our hands and seals this 25th day of February, 1846.

JOS. EACHES, [SEAL.]
R. JOHNSTON. [SEAL.]

Cost of taking this deposition $5.

JOS. EACHES,
R. J.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Joseph Eaches and Reuben Johnston, gentlemen, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection in diligently examining Maskell C. Ewing and Jno. C. Herbert, in behalf of William H. Irwin, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, between William H. Irwin, defendant, and Geo. O. and J. A. Dixion, complainants; we therefore desire you, that, at such time and place as you shall appoint, you assemble yourselves together, and the witnesses aforesaid before you, or any two or more of you, that you call, and cause to come, and diligently examine on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined them, and taken their depositions as aforesaid, that you return the same to our said court, certified under your hands and seals, inclosed together with this writ.

Answer. As a wharf proprietor I have been in the habit of frequently visiting Alexandria within the period of time mentioned in the question, and the general reputation, as to the ownership of the said space, I believe to have agreed with my own impression, as expressed in my answer to the preceding question.

Cross examination.

Question by complainants' counsel.

First. How long has it been since you ceased to reside in the town of Alexandria, and when did the question of right of property in the space lying east of the warehouse, become a subject of discussion so as to enable you to speak of the general reputation in regard to it?

Answer. I left Alexandria in the year 1807 with an intention to remove finally, and have occasionally visited the town since, but from 1807 have not considered Alexandria as my home. I never heard the question of right of property raised until within three years past, when it was mentioned to me by William H. Irwin, who I understand is defendant in this cause.

Answer. After the conversation with William H. Irwin, to which you have referred in your last answer, did you or not converse with others so extensively as to enable you to speak of the general reputation?

Answer. I have had no conversation with any other person on the subject.

Re-examination.

Please explain your meaning in the remark above made, "I never heard the question of right of property raised until within three years."

State whether or no, prior to that time, your intercourse with the people of Alexandria had been such as to enable you to ascertain whether there was or not any general reputation as to the ownership of said open space, and state what said general reputation was, if any existed.

I repeat that I never heard the question of the right of property raised until within three years; my own opinion or impression I have expressed in my answer to a former question; whence I have derived that impression, from individuals, in conversation, or otherwise, I cannot say.

Further this deponent sayeth not.

J. C. HERBERT.

Tuesday, one o'clock, P. M., 17th of March, 1846.

Commission adjourned, by consent of parties, until Saturday next, 21st inst., at 9 o'clock, then to meet for the purpose of taking the deposition of M. C. Ewing.

JOS. EACHES,
R. JOHNSTON,
Commissioners.

Deposition of M. C. Ewing.

Saturday, March 21st, 1847.

The commissioners met at 9 o'clock. Present, Francis L. Smith, counsel for the complainants, and Henry W. Davis, counsel for the defendant; Maskell C. Ewing, a witness, introduced by the defendant, of lawful age, having been sworn in due form of law, deposes and says as follows:

State whether or no you hold any office under the common council of Alexandria; and if any, what. Whether you ever made a survey of the said town, or any part thereof; and if any, what, and under whose authority?

State whether or no the annexed plat is a correct representation of any and what part of the said town; whether or no it was laid down from any and what survey, by whom, and when?

I hold the office of surveyor of the town of Alexandria, under an appointment from the common council. I made a survey of the town under a special order of the common council, with a map of the shore line, wharves, and position of the different streets. The annexed plat marked E is a correct representation of that part of the town as originally located between Point West and Point Lumley, with the wharves as they were in 1841, as laid down by me upon the survey as above ordered.

State what the dotted line adjoining the space marked Daingerfield designates. State whether or no any and what change has been made on said space marked Daingerfield, and when, and by whom.

The dotted line represents an improvement made subsequent to the survey of 1841 by Mr. Henry Daingerfield in 1844, or about that time. The wharf front, previous to about 1844, followed the strong black line; the dotted line shows a new or extended head to the pier, a new wharf, and the brick warehouse on which the word Daingerfield is written.

State when said brick warehouse was erected, what was the condition of the space on which it was erected prior to its erection; whether or no was the said space open; and whether or no did it differ in any, and if in any, what respect from the other wharf property in the said town.

The brick warehouse was erected in 1844 as nearly as I remember, but I do not remember the condition of the space, whether open or enclosed. The other wharf property generally has a passage around it next to the wharf for wheel carriages; my impression is that there was no passage around the corner of this wharf.

Whether or no did any building cover the whole space now covered by Daingerfield's warehouse? Whether or no was the access to the wharf from Union street over the space now covered by the warehouse aforesaid prevented in any manner prior to its erection? Whether or no was there any and what buildings, or other obstruction, there; and if so, was the space covered or obstructed by it greater or less than that now covered by the warehouse?

I am not aware of the access being prevented. I think the space was without building, none covering so great a space as the present

warehouse; my impression is that there was no public thoroughfare for wheel carriages over the space on which Daingerfield's warehouse now stands.

State what the spaces marked a, b, c, designate?

They each represent blocks of buildings occupied as stores and warehouses, having their principal fronts on the river.

M. C. EWING,
Surveyor of Alexandria.

DISTRICT OF COLUMBIA, *Alexandria county, to wit:*

We, Joseph Eaches and Reuben Johnston, justices of the peace in and for the county aforesaid, do hereby certify, that the foregoing depositions of John C. Herbert and M. C. Ewing were taken before us, in pursuance of the annexed commission and notice, at the place, the time, in the manner, and for the purpose stated in the caption and body of said depositions.

We further certify, that the interrogatories are in the handwriting of the counsel for the respective parties; that the answers of John C. Herbert are partly written by him, and partly by Joseph Eaches, one of the undersigned; that the answer of M. C. Ewing was written by him in our presence; that both depositions were taken in the presence of the counsel for the parties to this suit, as well as in the presence of the undersigned; and that the deponents signed said depositions in our presence.

We further certify, that we are not counsel or attorney for either party in this cause, nor in any manner interested in the result of this suit.

Given under our hands and seals, this 21st day of March, 1846.

JOS. EACHES, [SEAL.]
R. JOHNSTON. [SEAL.]

Cost of taking these depositions six dollars, at the cost of the defendant.

JOS. EACHES,
R. JOHNSTON.

[For plan of Alexandria town see original. Page 324.]

[Each regular and complete lot contains half an acre, or 80 square perches. The courses of Royal, Fairfax, and Water streets is N. 12° E., and S. 12° W. The courses of Duke, Prince, King, Cameron, and Oronoko streets are N. 78° W., and S. 78° E; all the streets except Water street are 66 feet wide, and Water street is 50 feet wide. As regular lots 5 chains 17½ links, by 3 chains 37 links, is the measure.]

E.

DISTRICT OF COLUMBIA, *Alexandria county, sct:*

We, Joseph Eaches and Reuben Johnston, commissioners, (and justices of the peace for the county aforesaid,) do hereby certify, that this plat marked E is the one referred to by M. C. Ewing in his deposition taken before us this day, in the case of George O. Dixion and John A. Dixion vs. William H. Irwin.

Given under our hands, this 21st day of March, 1841.

JOSEPH EACHES,
R. JOHNSTON.

The red plat is an accurate copy from the original plan of the town, as laid off in 1749, taken from the official record at Fairfax C. H. The black shows the present wharfing and additional squares extending riverwards.

Drawn by M. C. Ewing, surveyor, Alexandria, April 10th, 1845.

FAIRFAX COUNTY, *July the* 18*th*, 1749:

By virtue of an act of the general assembly, made at the college of the city of Williamsburg, in the twenty-second year of the reign of our Sovereign Lord, George the second, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, &c., and in the year of our Lord one thousand seven hundred and forty-eight, entitled an act for erecting a town at Hunting Creek warehouse, in the county of Fairfax, and pursuant to the directions and order of Richard Osburne, Lawrence Washington, William Ramsay, John Carlyle, Gerrard Alexander, and Hugh West, gentlemen, by the said act appointed trustees for the said town, to be called Alexandria. I, the subscriber, did survey and lay off sixty acres of land to be for the said town, and divided the same into lots, streets, &c., as per the plan thereof.

JOHN WEST, jr., *deputy S. F. C.*

A true copy by—

DANIEL JENNINGS.

Memo: The general assembly in which this act was made began the 27th day of October, 1748.

SURVEYOR'S OFFICE, *Fairfax county,*
Commonwealth of Virginia:

I, James Thrift, surveyor of said county, in the commonwealth aforesaid, hereby certify, that the above plat, drawn in red iuk, with the figures, letters, and words, written in red ink, designated as "a plan of Alexandria town," is a true and complete copy from the original survey of said town made in the year 1749, and of record in the surveyor's book, among the records of original surveys now recorded in the surveyor's office of Fairfax county for said year; and that there is no official seal belonging to this office.

Given under my hand, as surveyor of Fairfax county, in the Commonwealth of Va., this 25th April, 1845.

JAMES THRIFT, *S. Fx. Cb.*

FAIRFAX COUNTY, *Commonwealth of Virginia:*

I, John C. Hunter, presiding justice of Fairfax county court, hereby certify, that the above certificate of James Thrift, to the plat of Alexandria town, is in due form, and by the proper officer.

Given under my hand this 25th April, 1845

JNO. C. HUNTER.

FAIRFAX COUNTY, *Commonwealth of Virginia:*

I, Spencer M. Ball, clerk of the county court of Fairfax county, hereby certify, that the above named John C. Hunter is the presiding justice of the county court of Fairfax county, in the Commonwealth of Va., and that he is duly commissioned and qualified therefor.

In testimony whereof, I have hereto set my hand and the official seal of the county court of Fairfax county, in the Commonwealth [L. S.] of Virginia, this 25th day of April, 1845, and in the 69th year of the commonwealth.

S. M. BALL, *C. C. C. of Fx.*

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Reuben Johnston and Joseph Eaches, gentlemen, greeting:

Know ye, that we, trusting to your fidelity and provident circumspection in diligently examining James Irwin, James Smith, and Dr. James Carson, in behalf of William H. Irwin, in a suit depending in our circuit court of the District of Columbia, for the county of Alexandria, wherein George O. Dixion and John A. Dixion are complainants, and the said Wm. H. Irwin is defendant; we therefore desire you, that at such time and place as you shall appoint, you assemble yourselves together, and the witnesses aforesaid before you, or any two or more of you, that you call and cause to come, and diligently examine on the Holy Evangelists of Almighty God, touching the matter in controversy between the aforesaid parties; and when you have examined them and taken their depositions as aforesaid, that you return the same to our said court, certified under your hands and seals, inclosed together with this writ. Witness William Cranch, esquire, chief judge of our said court, this 2d day of May, in the year of our Lord 1846.

CASSIUS F. LEE, *C. C.*

To Messrs. Geo. O. Dixion and John A. Dixion: Take notice, that on the 2d day of May, 1846, at the office of Joseph Eaches, in Alexandria, between sunrise and sunset, I shall proceed to take the depositions of James Irwin, James Smith, Dr. James Carson, and others, to be read at the hearing of the injunction suit now depending before the circuit court of the District of Columbia for Alexandria county, wherein I am defendant and you are complainants; and should the same not be completed on the above day, the same will be continued at such times and places as the commissioners shall designate.

WM. H. IRWIN.

DISTRICT OF COLUMBIA,
Alexandria county, to wit:

This day William Devaughn personally appeared before me, Joseph Eaches, a justice of the peace in and for the county of Alexandria aforesaid, and made oath in due form of law, that he had this day, at the hour of 5 o'clock, P. M., delivered to George O. Dixion and John A. Dixion, in person, a true copy of the above notice.

Given under my hand this 21st day of April, 1846.

JOS. EACHES.

GEORGE O. DIXION & JOHN A. DIXION
vs.
WILLIAM H. IRWIN.

Deposition of James Irwin, taken before us, Reuben Johnston and Joseph Eaches, justices of the peace in and for the county of Alexandria, in the District of Columbia, at the office of Joseph Eaches, in Alexandria, on the 2nd day of May, 1846, between sunrise and sunset, in pursuance of the annexed commission and notice, to be read at the hearing of the injunction suit now depending before the circuit court of the District of Columbia, for Alexandria county, wherein George O. Dixion and John A. Dixion are complainants, and William H. Irwin is defendant.

James Irwin's deposition.

James Irwin, of lawful age, a witness introduced on the part of the defendant, having been sworn in due form of law, deposes and says, as follows:

In answer to interrogatory 1st by defendant: Are you acquainted with the parties to this suit, and the property in contest between them?

Answer. I am acquainted with the parties and the property in contest between them.

Interrogatory 2d. Look at the paper now shewn to you, marked Exhibit H, and say what the said paper is, and whether or no it is referred to in any and what deed or deeds, and in what language, and by what words is the same referred to?

Answer. It, the said paper marked "exhibit H," is the allotment of the real estate of the late Thomas Irwin to his different heirs, and is referred to in the deed of partition of the heirs of the late Thomas Irwin, and is couched in the following language, "and the said parties of the six first parts to this deed severally, separate, and apart from the other parties, do for themselves, himself, and herself, and their, his, and her respective heirs, executors, and administrators, covenant and agree, to and with each other severally, and their, his, and her heirs and assigns, that they, he, and she severally, and their, his, and her several heirs, executors, and administrators, will warrant and defend each to the other one sixth part of the said lots of ground, annuities, and rent charges, as hereby allotted and conveyed in severalty at the value affixed to each of the same by an agreement in writing interchanged by

FAIRFAX COUNTY, *Commonwealth of Virginia:*

I, John C. Hunter, presiding justice of Fairfax county court, hereby certify, that the above certificate of James Thrift, to the plat of Alexandria town, is in due form, and by the proper officer.

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WM. H. IRWIN.

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Alexandria county, to wit:

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James Irwin's deposition.

James Irwin, of lawful age, a witness introduced on the part of the defendant, having been sworn in due form of law, deposes and says, as follows:

In answer to interrogatory 1st by defendant: Are you acquainted with the parties to this suit, and the property in contest between them?

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Answer. It, the said paper marked "exhibit H," is the allotment of the real estate of the late Thomas Irwin to his different heirs, and is referred to in the deed of partition of the heirs of the late Thomas Irwin, and is couched in the following language, "and the said parties of the six first parts to this deed severally, separate, and apart from the other parties, do for themselves, himself, and herself, and their, his, and her respective heirs, executors, and administrators, covenant and agree, to and with each other severally, and their, his, and her heirs and assigns, that they, he, and she severally, and their, his, and her several heirs, executors, and administrators, will warrant and defend each to the other one sixth part of the said lots of ground, annuities, and rent charges, as hereby allotted and conveyed in severalty at the value affixed to each of the same by an agreement in writing interchanged by

the parties, and bearing an equal date herewith, and by said parties signed against the claims and demands of all persons whatsoever."

Interrogatory 3. State what is the general reputation of the town of Alexandria, respecting the open ground between the warehouses and the river on the east of said town, as to whether it is public or private property, and as to the existence of a street over the same, between King and Prince streets in particular?

Answer. The open ground between the warehouses and the river on the east side of said town has always been considered private property since my recollection; there has been no street there, but people have passed to and fro; it has been left open for the convenience of the owners of the real estate, warehouses, and wharves, and particularly the property between King and Prince streets.

Question 4th. Whether or no have any and what person or persons exercised ownership over the said open ground in controversy? And if [any,] in what manner, and by what acts was it manifested?

Answer. My father during his life, and since then, the owners of the wharf and warehouses, have exercised ownership over said open space of ground in controversy; until the sale of the warehouse to Mr. Dixion, they exercised ownership by placing any thing there that they pleased, and driving horses and carts away; the horses in stamping would make holes and [were] a nuisance.

Look at the paper marked B, and say whose signature and seal are thereto affixed, and when the said paper was executed.

Answer. The signature and seal to paper marked B are mine, and were executed at the time at which the paper bears date.

Question by complainant's counsel. In your answer to defendant's second interrogatory you undertake to furnish an extract from a deed, what is the date of said deed, between what parties; and furnish the rest of said deed from which you have given this extract; instead of answering this question, it is agreed between the counsel for the complainants and defendant, that the accompanying deed + may be filed, instead of the answer of the deponent, subject to exceptions.

No. 2. Were you ever the owner of the warehouse now owned by Geo. O. and John A. Dixion, on the south side and at the east end of King street, in the town of Alexandria? If so, how did you obtain the title to the same, and to whom did you dispose of it?

Answer. I did own said property; I obtained the title as part of my apportionment of my father's estate; I disposed of it by deed of trust to my mother, and she released it to the Farmers' Bank to pay a debt due by me to said bank, for which it was sold.

No. 3. At the time of the sale of said property for the debt due to the bank mentioned in your last answer, were there any doors or windows in the eastern front of the said warehouse of said Dixions; and for what purpose were the said doors, if any, used; and was there prior to said sale any fence, building, or permanent obstruction between the eastern front of said warehouse and the river Potomac?

Answer. There were both doors and windows; the said doors were

used for taking in and putting out goods; there was no fence, building, or permanent obstruction prior to said sale, between the eastern front of said warehouse and the river Potomac.

No. 4. Is there or not any wooden beam extending from the eastern front of said warehouse? If so, from what portion of said front does it extend; what are the dimensions of the same; when was it placed in said building, if at all; and for what uses, if any, has it been applied?

(This interrogatory excepted to by the defendant's counsel.)

Answer. As well as I can recollect there was something extending from the said front for the purpose of hoisting; if it was there, that was the purpose for which it was used; it must have extended from the centre of the front just above the third door. I do not know the dimensions; if applied for any purpose, it has been for hoisting up and lowering down; when I occupied the house I generally hoisted and lowered my goods through the trap in the second room, there being a division in the house.

No. 5. What was the state of the ground immediately adjoining the eastern front of said Dixion's said warehouse at the time it was sold for the said debt due the Bank; was it paved or unpaved; if paved, to what extent; with what, when, and by whom?

Excepted to by the defendant's counsel.

Answer. At the time alluded to there was a narrow pavement running along from one end of the house to the other; I cannot state the width exactly; the pavement was of brick; when made, or by whom, I do not recollect; but presume that I had to pay for it.

No. 6. In your answer to the defendant's 4th interrogatory you speak of your father and others driving off horses, &c., from the ground in front of said Dixions' warehouse, state how many horses and carts passed over said ground yearly, monthly, or daily; were there few or many; who and what person or persons, if any, stood upon, and passed over, said ground, and when; and were any persons, and who, prohibited from passing over said ground, or transacting business on the same?

Answer. I never was fool enough to keep an account of any such thing. I had something else to do. I cannot state how many there were; there might have been few or many; it is impossible for me to answer the question. I cannot answer the question at all. I know I have driven persons away from there myself.

No. 7. Why did you drive persons away?

Answer. Because they were in some way offensive to me.

No. 8. Question by same. Has any fence, building, or obstruction, been erected between the eastern front of said Dixions' warehouse and the river Potomac, since the said sale for the debt due the said Bank? If so, by whom?

Excepted to by the defendant's counsel.

Answer. There was a small frame building erected there, and I believe William H. Irwin had it put there since the said sale.

No. 9. Did you or not ever say, in the presence of John Jamieson, John T. Armstrong, and John Mannery, or of any or either of them,

that said building, or other enclosure on said ground, was put up in violation of the rights of said Dixions as the owners of said warehouse, or words to that effect?

This interrogatory excepted to by the defendant's counsel as irrelevant.

Answer. I do not recollect ever having so stated.

No. 10. Had you ever any conversation with either of the parties referred to in the last question in reference to any fence, enclosure, or building erected on said ground since said sale? If so, state said conversation.

Answer. I have no recollection of ever having had any conversation, with either of the persons named, on the subject.

Question by defendant's counsel.

State whether or no you are a certificated bankrupt; and if so, who was the assignee of your estate in bankruptcy.

Answer. I am. Reuben Johnston is the assignee.

Further this deponent saith not. JAMES IRWIN.

The complainants' counsel excepts to the foregoing deposition of James Irwin, because he is an incompetent witness from interest; because his evidence is hearsay and irrelevant; and because there is evidence of a higher character of the facts, (if they exist,) to which he has testified; and because his deposition is otherwise illegal and irregular.

FRANCIS L. SMITH,
Sol. for complainants.

DISTRICT OF COLUMBIA,
Alexandria county, to wit:

We, Joseph Eaches and Reuben Johnston, justices of the peace in and for the county of Alexandria aforesaid, do hereby certify, that the foregoing deposition of *William H.* Irwin was taken before us at the time, place, manner and for the purposes stated in the caption thereof. We further certify, that the answers were committed to writing by one of the undersigned, and that after they had been read over in the hearing of the deponent, he signed the same in our presence. We further certify, that neither of us are interested in the result of this suit.

Given under our hands and seals this 2d day of May, 1846.

JOS. EACHES, [SEAL.]
R. JOHNSTON. [SEAL.]

Cost of taking deposition, six dollars.

JOS. EACHES,
R. J.

Exhibit H, referred to in Jas. Irwin's deposition.

H.—The exhibit referred to in the foregoing deposition.

No. 1.

James Irwin's property as drawn, viz:

1. Warehouse on north side of the wharf, at present occupied by Andrew J. Fleming.

2. One third of the wharf in connection with Ann J. Carey and Wm. H. Irwin, which property shall be held in common, say from the east front of the buildings on said wharf, extending into the river Potomac, granting to said Ann J. Carey and Wm. H. Irwin an equal front on said wharf with myself, in the event of any extension of the buildings towards the east; which extension shall be made by the consent of any two of the parties concerned; provided, those two erect the buildings (in the event of the third party not being able to spare the means,) charging to said person cost only, for which the property and $\frac{1}{3}$ of the wharf shall be bound, with legal interest until paid.

3. House and lot on King, between Washington and Columbus streets, (known as Perry's.)

4. Ground rent on lot west side of Royal, and north of Cameron st.; paid by James English.

5. Lot northwest corner of Wolf and Pitt streets, (known as Dunlap's.)

No. 2.

Ann J. Carey's property as drawn, viz:

1. Warehouse south side of the wharf, at present occupied by George Johnson & Co.

2. One third of the wharf in connection with James Irwin and Wm. H. Irwin, which property shall be held in common with them, say from the east front of the buildings on said wharf, extending into the river Potomac, granting to James Irwin and Wm. H. Irwin an equal front on said wharf with myself, in the event of any extension of the buildings towards the east, which extension shall be made by the consent of any two of the parties concerned; provided, those two erect the buildings, (in the event of the third party not being able to spare the means,) charging to said third person cost only, for which the property with $\frac{1}{3}$ of the wharf shall be bound, with legal interest until paid.

3. One house and lot, south-east corner of Royal and Queen streets, (known as Summerses.)

4. Ground rent on King near St. Asaph street, paid by heirs of Elizabeth Parsons.

5. Ground rent on lot N. W. corner of Patrick and Gibbon streets, paid by Mrs. Naylor.

No. 3.

Wm. H. Irwin's property as drawn:

1. Middle warehouse on the east side of Union street, with an alley in the rear extending to the wharf, and liberty to build on the walls of the warehouse, on each side of said alley, by securing the roofs from leaking.

2. One third of the wharf in connection with Ann J. Carey and James Irwin, which property shall be held in common with them, say from the east front of the buildings on said wharf, extending into the river Potomac, granting to Ann J. Carey and James Irwin an equal

front on said wharf with myself, in the event of any extension of the buildings towards the east, which extension shall be made by the consent of any two of the parties concerned; provided those two erect the buildings, in the event of the third party not being able to spare the means,) charging to such third person only cost, for which the property with $\frac{1}{3}$ of the wharf shall be bound, with legal interest until paid.

3. Ground rent on lot west side of St. Asaph, between Prince and Duke streets, paid by Richard Clagett.

4. Ground rent northeast corner of Duke and Washington streets, paid by John Lloyd.

5. Ground rent north west corner of King and Royal streets, paid by Charles McKnight.

6. Ground rent on Fairfax, between Princess and Queen streets, paid by Snyder and Sheehy.

7. Lot on Fayette alley between Water and Union streets.

No. 4.

Property as drawn by Mrs. H. Wilson.

1. One undivided half of City Hotel.

2. One lot and stable on south east corner of Pitt and Cameron streets, (known as Towerses.)

3. Lot on Princess street, known as Carr's.

4. Ground rent on east side of Royal, between Cameron and Queen streets, paid by John West.

5. Stables and lot on west side of Washington, between King and Prince streets.

6. House and lot on Fairfax, between Duke and Wolf streets, (known as E. Edmundses.)

No. 5.

Property as drawn by Mary Irwin.

1. Dunlap's warehouse on the west side of Union street.

2. Lot and improvements on northwest corner of Cameron and Royal streets.

3. Warehouse southeast corner of King and Union streets, (occupied by C. C. Smoot & Co.)

4. Lot and improvements on northeast corner of Fairfax and Duke streets.

5. Lot of ground on the west side of Fairfax, between King and Prince streets, (known as Wedderburns.)

6. Lot of ground southwest corner of Fairfax and Gibbon streets.

7. Lot and improvements on river Potomac, (known as Hawkes'.)

8. Ground rent on lot Fayette, between King and Prince streets, (paid by C. & H. Taylor.)

9. Ground rent of Isaac Gibson on house, Duke street, (paid by John W. Massie.)

10. Stables and lot on Pitt, between Cameron and King streets, (known as Triplett's.)

11. Ground rent on lot west side of St. Asaph, between Queen and Princess streets.

12. Ground rent on lot west side of St. Asaph, between Queen and Princess streets, (paid by Mrs. Dudley.)

13. Ground rent on lot north side of Queen street, known as Lanphier's, between St. Asaph and Washington streets.

No. 6.

Property drawn by Thomas Irwin in division.

1. One warehouse and lot on northeast corner of Duke and Union streets.

2. One warehouse and lot on the north side of Union street at present occupied by Newton Keene.

3. One acre of ground and improvements on north side of Cameron street, now occupied by R. Middleton.

4. One lot and improvements, known as Beedle's lot, on south side of Princess, between St. Asaph and Washington.

5. Water street property on west side, between Duke and Princess streets, procured from heirs of Arrell.

6. Ground rent on Oronoko street, paid by Mrs. Hodgson.

7. Ground rent northwest corner King and Patrick, paid by Mills.

8. Ground rent southeast corner King and Columbus, paid by Mrs. Ross.

9. Ground rent on north side of Queen street, as paid by Hugh Carlin, January 15th, 1835.

Valuation of the real estate of the late Thomas Irwin as agreed upon by the several heirs at law in Alexandria, 15th January, 1835, viz:

A warehouse and lot lower end of King street, now in the occupancy of Andrew J. Fleming, valued at -	$2,200 00
A warehouse and lot immediately west of the above, now in the occupancy of C. C. Smoot & Co., valued at -	1,200 00
A warehouse and lot on the south side of the wharf now occupied by George Johnson & Co., valued at -	2,000 00
A warehouse and lot immediately west of the above warehouse, occupied by George Johnson & Co., and now occupied by Stephen Shinn, valued at - -	1,000 00
A warehouse and lot immediately north of the above, and recently occupied by J. and W. H. Irwin, together with the alley leading to the wharf, with the right to use and build upon the wall of warehouse now occupied by George Johnson & Co., and the wall of warehouse now occupied by A. J. Fleming, by so securing the roofs of the north and south warehouses, so that they will not leak; the centres of all division walls running east and west, in all cases to be considered the division lines of the lots above mentioned, valued at	1,200 00

A warehouse and lot formerly belonging to Valentine Piers, binding on the west side of Union street about 30 feet, and running westwardly of even width, about 70 feet, to a 10 feet alley, valued at, (at present occupied by Newton Keene) - - - -	$1,000 00
A warehouse and lot adjoining the above, formerly belonging to John Dunlap, and fronting on the west side of Union Street about 30 feet, running westwardly about seventy feet, to a ten feet alley, valued at -	1,200 00
One undivided half part of the City Hotel premises, together with a lot and stable in the rear of said premises, as derived from the heirs of Thomas Towers, valued at $5,000 and $700 - - - - -	5,700 00
A lot and improvements on northwest corner of Cameron and Royal streets, binding on west side of Royal street 54 feet and 2 inches, and on north side of Cameron street 87 feet, to Theatre alley, valued at - -	1,400 00
The wharf property on south side King street to be more particularly described by deed, valued at - -	8,000 00
A lot on north side of Wolfe street 61 feet eight and a half inches, west side of Pitt street 159 feet, valued at	200 00
A lot and improvements, northeast side of Fairfax and Duke streets, binding on Duke street 98 feet 9 inches, more or less; and on Fairfax street 107½ feet more or less, valued at - - - - -	850 00
An annuity of $25 per annum on a lot of ground on east side of Fairfax street 25 feet, running eastwardly of even width, 57 feet 5 inches, valued at - -	200 00
A lot of ground binding north side of Fayette alley 48 feet, running northwardly of even width, 65 feet 7 inches, valued at - - - - -	250 00
A lot and improvements, east side of Pitt street 22 feet, running east of even width, 114 feet 5 inches, to a 9 feet alley, valued at - - - - -	240 00
A lot of ground on the west side of Fairfax street, between King and Prince street, binding on Fairfax street nineteen feet, running westwardly of even width, 116 to an alley, valued at - - - -	200 00
A lot with a small frame tenement, known as Hauke's lot, valued at - - - - -	850 00
A lot of ground situated southwest corner of Fairfax and Gibbon streets, binding west side of Fairfax street 87 feet 7 inches, running westwardly of even width, 123 feet 5 inches, valued at - - -	150 00
An acre of ground with improvements, as now occupied by Richard Middleton, and obtained from Peter Sherron, &c., valued at - - - - -	850 00

Ground rents, viz:

A rent charge of $\$26\frac{2}{3}$ on a lot of ground covered with improvements at the intersection of King and Columbus streets, binding on the south side of King street 123 feet 5 inches; thence southwardly of even width, and binding on the east side of Columbus street, 176 feet 7 inches, rent payable annually on 7th month 1st., and original rent, valued at 8 per cent. - $333 33

A rent charge on a lot of ground and improvements, binding on west side of Water street $32\frac{3}{4}$ feet, near to Duke street, and running westwardly parallel therewith of even width 63 feet 5 inches, the annual rent charge of $88\frac{50}{100}$ was payable on the 1st day of January, annually, the continuance of which was declined by John Adam, and the keys surrendered on 14th day of 5th month, 1824, at which time there was one year's rent due up to 1st mo. 1st, 1824, and left unpaid - 700 00

A rent charge on a lot of ground with improvements on the southeast corner of Queen and Royal streets, binding on the east side of Royal street 22 feet 3 inches, running eastwardly of even width, say 60 feet, more or less, to a 7 feet alley. The rent was $100 per annum, payable semi-annually on 2d mo. 18th, and 8th mo. 18th. Keys surrendered by the connexions of Henry Summers, who declined acting further in the premises - - - - - - 700 00

A rent charge on a lot of ground and improvements on the east side of Royal street, between Cameron and Queen streets, binding on Royal street $27\frac{1}{2}$ feet, and running eastwardly of even width, 123 feet 5 inches, rent $50 per annum payable semi-annually, on 2d and 8th month, 19th, defeasible on the payment of $500, with all rents to the time of release, valued at - 500 00

A rent charge on a lot of ground with shackling improvements, binding on the west side of Washington street, between King and Prince streets, running westwardly of even width, 123 feet, then joining with a lot forming an L, the said adjoining lot being attached to the rear thereof, and on the north side 48 feet 7 inches, by 24 feet 5 inches; the annual rent was $60, payable semi annually, on the 10th day of 6th and 12th month, and in default of the payment thereof, no representative appearing, we have taken possession without a formal re-entry, valued at - - - 300 00

A rent charge on a lot of ground and improvements, fronting on Princess street 80 feet, running southward-

ly of even width, 96 feet 7 inches; the rent was $80 per annum, payable semi-annually, on 6th and 12th months 1st; the property re-entered for default in payment 7th month, 1st, 1823, valued at - -	$800 00
A rent charge on Perry's property, south side of King street, 20 by 100 feet, valued at see deed of partition, dated January 15th, 1835 - - -	700 00
A rent charge of $50, payable annually, on one acre, now by Mrs. Naylor, see deed of partition, valued at	625 00
A rent charge on Fairfax, near to Princess street, now payable by Sheehy and Snyder, rent $47 08. See deed of partition, valued at - - - - -	588 50
A rent charge of 59\frac{1}{6}$ per annum on Carr's lot, see deed of partition, valued at - - - -	300 00
A rent charge of $50 per annum on lot northeast corner of Washington and Duke streets, now payable by John Lloyd, see deed of partition, valued at - -	625 00
A rent charge on a lot of ground west side of St. Asaph, between Prince and Duke streets, of $28 per annum, now payable by R. Clagett, valued at, (see deed)	350 00
A rent charge of $40 per annum, payable yearly by Hugh Caroline, and subject to a redemption, on north side of Queen, between Fairfax and Water streets, (see deed,) valued at - - - - -	400 00
One undivided half of $24 per annum on a lot of ground west side of St. Asaph, near to Queen street, see deed of partition, valued at - - - - -	120 00
One undivided half of 36\frac{50}{100}$ per annum, on lot west side of St. Asaph, near Queen street, now occupied by D. Dudley, valued at - - - - -	182 50
One undivided half of $23 per annum, on lot and improvements on Queen, near to St. Asaph street, valued at - - - - - - -	115 00
A rent charge of 51\frac{1}{3}$ annually, on lot and improvements, northwest corner of King and Royal streets, now occupied and payable by Charles McKnight, valued at - - - - - - -	645 83
An annuity of 46\frac{60}{100}$, payable quarterly, on lot and improvements, east side of Fayette street, now payable by C. and H. Taylor, valued at - -	466 00
A rent charge of $52 75 per annum, payable quarterly, on lot and improvements west side of Royal, near to Cameron street, now occupied by James English, valued at - - - - - - -	659 38
A rent charge of $25 83$\frac{1}{2}$, payable annually, on half acre of ground, less 24 feet by 166, on north side of King, near to St Asaph, payable by widow Parsons' heirs, valued at - - - - - -	322 92

A rent charge of $66⅔ payable annually, on a lot of ground west side of St. Asaph, and on north of Oronoko street, payable by Mrs. Hodgson, valued at	$833 33
A rent charge of $7 50/100 per annum., payable on 2 lots of ground north side of Duke street and west side of Columbus streets, now payable by John W. Massie, valued at	93 75
A rent charge of $83⅓ payable annually on a half acre of ground on N. W. intersection of King and Patrick streets, now payable by Wm. N. Mills and Walter Harris, valued at	1,041 67
An annuity of $310 on lot of ground S. side of King and west of West streets, known as Dougherty's lot and derived from William Herbert and wife, valued at	2,500 00
Part of a certain lot derived from the heirs of Brown, on Cameron street, commencing on the east line of said lot, running west 25 feet on Cameron street, then north 120 feet, then east 25 feet, thence with the east line to the place of beginning, with the improvements. See deed of partition, valued at	500 00
All the rest and residue of Brown's lot, save and except that part included in the above description. See deed of partition, valued at	1,000 00
	$44,092 21
Cash to be paid out of the receipts now in the hands of Wm. H. Irwin from real estate	464 06
	$44,556 27

It is hereby agreed, that the several pieces of property, annuities, and rent charges conveyed and assigned to us, the heirs and devisees of Thomas Irwin, deceased, by the deed of partition bearing equal date with this paper, shall be valued at the sums respectively annexed and extended to each, and by which each of the parceners or co-tenants shall be bound agreeably to the valuations in this paper contained; and further, that in all cases whereupon the default by the grantors or tenants in payment of any rent charges and annuities charged upon and issuing out of any lot of ground in the town of Alexandria, which the said Thomas Irwin, deceased, was seized and possessed of, which said pieces of property have been abandoned either during the life of the said Thomas or since his death, and possession of the same taken either by himself, or his heirs, or executors, and which are allotted to any of his heirs by the said deed of partition bearing equal date herewith, that should the equity of redemption be claimed and decreed in favor of the complainant, that any balance of money that may upon a legal settlement be found due to

the said Thomas Irwin, deceased, his heirs or executors, up to the date of this division, and which shall be paid by the person or persons claiming the said equity of redemption to the party holding the said annuity or rent charge, shall, after the deduction of all fees, costs, charges, and expenses attending the said suit, be equally divided by the party receiving the same among the other parties, viz: one sixth to each of the heirs of the said Thomas Irwin, or their legal representatives. Alexandria, January 15th, 1835.

THOMAS IRWIN, Jr.
JOHN E. CAREY,
WM. H. IRWIN,
MARY IRWIN,
HANNAH WILSON,
ANN J. CAREY,
JAMES IRWIN,
ANN D. IRWIN.

In chancery—between GEORGE O. DIXION and John A. Dixion, complainants, and WILLIAM H. IRWIN, defendant.

May 2d, 1846, at the execution of a commission for the examination of witnesses in this cause, this paper writing was produced and shewn to James Irwin, a witness sworn and examined, and by him deposed unto at the time of his examination on the defendant's behalf, before us.

JOS. EACHES,
R. JOHNSTON,
Commissioners.

Exhibit B, referred to in James Irwin's deposition.

B.

Know all men by these presents, that I, James Irwin, hereby release and forever quit claim unto Reuben Johnston, the assignee in bankruptcy for the county of Alexandria, all such surplus as may remain and be coming to me after the payment of all my debts provable under the commission of bankruptcy under which I have been discharged.

Given under my hand and seal this 14th day of October, 1845.

JAMES IRWIN. [SEAL.]

For deed of partition referred to in the foregoing deposition, see page 30, following complainants' amended bill.

Complainants' exhibits.

Executions and marshal's returns filed by complainants.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the marshal of the District of Columbia, greeting:

We command you, that of the goods and chattels, lands and tenements, of William H. Irwin, late in your said district, you cause to be

made six hundred and seventy dollars and thirty-one cents, with interest from the 14th of April, 1843, till paid; which John Tabb, late in our circuit court for the District of Columbia, for the county of Alexandria, recovered against him for debt. Also ten dollars and sixty-four cents, which to the said John Tabb in the said court were adjudged for his costs by him in this behalf expended, whereof he is convict, as appears to us of record; and that you have the same before the honorable the judges of our said court, at the court house in Alexandria, on the fourth Monday in January, to render to the said John Tabb of his debt and costs aforesaid, and have then there this writ.

Witness the honorable William Cranch, chief judge of our said court, this 18th day of December, 1844.

CASSIUS F. LEE,
Clerk of the circuit court for the District of Columbia, Alexandria county.

Upon which execution appeared the following endorsement:

"No property found to levy this execution upon.

D. MINOR, *D. M.*"

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the marshal of the District of Columbia, greeting:

We command you, that of the goods and chattels, lands and tenements, of William H. Irwin, late in your said district, you cause to be made one hundred and fifty-one dollars and twelve cents, with interest from the 22nd of July, 1843, till paid. Also $9 58, which George H. Smoot, late in our circuit court of the District of Columbia, for the county of Alexandria, recovered against him for his damages occasioned as well by reason of not performing a certain promise and assumption to the said George H. Smoot by the said William H. Irwin lately made, as for his costs by him in his behalf expended, whereof said Irwin is convict, as appears to us of record; and that you have the same before the honorable the judges of the circuit court of the District of Columbia, at the court house in Alexandria, on the fourth Monday in January, to render to the said George H. Smoot his damages and costs aforesaid; and have then there this writ. Witness the honorable William Cranch, chief judge of our said court, this 18th day of December, 1844.

CASSIUS F. LEE,
Clerk of the circuit court of the District of Columbia, for Alexandria county.

"No property found to levy this execution upon.

D. MINOR, *D. M.*"

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the marshal of the District of Columbia, greeting:

We command you, that of the goods and chattels, lands and tenements, of William H. Irwin, late in your said district, you cause to be

made eighty-eight dollars and forty-three cents, with interest from the 22d of July, 1843, till paid. Also $9 58, which George H. Smoot and Peter G. Uhler, trading under the firm of G. H. Smoot & Uhler, late in our circuit court of the District of Columbia, for the county of Alexandria, recovered against him for their damages, occasioned as well by reason of not performing a certain promise and assumption to the said G. H. Smoot and Uhler by the said William H. Irwin lately made, as for their costs by them in this behalf expended, whereof he is convict, as appears to us of record; and that you have the same before the honorable the judges of the circuit court of the District of Columbia, at the court house in Alexandria, on the fourth Monday in January, to render to the said G. H. Smoot and Uhler of their damages and costs aforesaid, and have then there this writ. Witness the honorable William Cranch, chief judge of our said court, this 18th day of December, 1844.

CASSIUS F. LEE,
Clerk of the circuit court of the District of Columbia, for Alexandria county.

"No property found to levy this execution upon.
D. MINOR, *D. M.*"

DISTRICT OF COLUMBIA, *sct:*

The United States of America, to the marshal of the District of Columbia, greeting:

We command you, that of the goods and chattels, lands and tenements, of William H. Irwin, late in our said district, you cause to be made four hundred dollars, with interest from the 13th of May, 1843, till paid, which Benjamin Waters, late in our circuit court for the District of Columbia, for the county of Alexandria, recovered against him for debt. Also $10 $\frac{43}{100}$, which to the said Benjamin Waters, in the said court, were adjudged for his costs by him in this behalf expended, whereof said Irwin is convict, as appears to us of record; and that you have the same before the honorable the judges of our said court, at the court house in Alexandria, on the fourth Monday in January, to render to the said Benjamin Waters of his debt and costs aforesaid, and have then there this writ. Witness the honorable William Cranch, chief judge of our said court, this 18th day of December, 1844.

CASSIUS F. LEE,
Clerk of the circuit court for the District of Columbia, Alexandria county.

"No property found to levy this execution upon.
D. MINOR, *D. M.*"

Deed from Carlyle and West to Laurence Washington.

Defendant's exhibits.

This indenture, made the twentieth day of September, in the year of our Lord one thousand seven hundred and forty-nine, between John Carlyle and Hugh West, gentlemen, directors and trustees for Alexan-

dria town, in Fairfax county, of the one part, and Laurence Washington, gentleman, of said county, of the other part, witnesseth: that the said John Carlyle and Hugh West, for the consideration of the sum of thirty-three pounds six shillings and sixpence, current money of Virginia, to them in hand paid by the said Laurence Washington, the receipt whereof is hereby acknowledged, have sold, aliened, enfeoffed, and confirmed to him, the said Laurence Washington, one half acre or lot of land in Alexandria town, in the county of Fairfax, numbered fifty-one, and bounded as per plot and survey made by John West, jun'r, on the eighth day of July, one thousand seven hundred and forty-nine, bounded on Water street and King street. To have and to hold the said half acre or lot of land, as aforesaid, to him, the said Laurence Washington, his heirs and assigns, forever, in as full and ample manner as it is by law vested in us; provided he, the said Laurence Washington, his heirs and assigns, shall and will erect, build, and finish on the said [lot,] one house of brick, stone, or wood, well framed, of the dimensions of twenty feet square, and nine feet pitched, at the least, or proportionable thereto, with a brick or stone chimney, within two years after the date hereof, and place the same according to the rule and direction of the said directors; otherwise this deed to be void, and the lot herein mentioned to be reverted in the said trustees, to be by them sold and conveyed by auction to the highest bidder, according to the act of assembly.

In witness whereof, the said trustees have to these presents set their seals the day and year above written.

JOHN CARLYLE, [SEAL.]
HUGH WEST. [SEAL.]

Sealed and delivered in the presence of—
JOHN WEST, jr.,
JOHN DIXON,
HUGH PARKER.

At a court held for Fairfax county, September the 26th, 1749, John Carlyle and Hugh West, gentlemen, acknowledged this deed to Laurence Washington, gentleman, to be their acts and deeds, and was admitted to record.

Teste: JOHN GRAHAM, *Clerk.*

A copy. Teste:

S. M. BALL, *C. C.*

Deed—Fairfax, Carlyle, and Washington, ex'rs, to Patterson.

This indenture, made this 20th day of May, anno domini one thousand seven hundred and sixty, between George William Fairfax, John Carlyle, and George Washington, the surviving acting executors of the last will and testament of Laurence Washington, late of the county of Fairfax, gentleman, deceased, of the one part, and John Patterson of the county aforesaid, in the colony of Virginia, joiner, of the other part; whereas the said Laurence Washington was, in his lifetime, seized in

his demeine, as of fee, in two lots or half acres of land, situate in the town of Alexandria, on Fairfax and King street, and numbered in the plan and survey of said town fifty one and fifty-two; and being so thereof seized, made his last will and testament in writing, and therein, amongst other things, did order and direct that his executors in the said will mentioned should sell the said two lots of land the better to enable them to discharge the debts of the said testator. Now this indenture witnesseth, that the said George William Fairfax, John Carlyle, and George Washington, the only acting executors to the said Laurence Washington, in virtue of the power and authority to them given by the last will and testament aforesaid, and in consideration of the sum of one hundred and fifty pounds, current money of Virginia, to them in hand paid by the said John Patterson at and before the sealing and delivery of these presents, the receipt whereof the said George William Fairfax, John Carlyle, and George Washington, doth hereby acknowledge, and the said John Patterson therefrom absolutely doth acquit and discharge, hath granted, bargained and sold, aliened, enfeoffed, released and confirmed, and by these presents doth grant, bargain and sell, alien, enfeoff, release and confirm, unto the said John Patterson, his heirs and assigns, forever, all them entire lots or half acres of land, situate, lying, and being in the town of Alexandria, bounded by Fairfax and King streets, numbered in the plan of said town fifty-one and fifty-two, being the lots whereof Laurence Washington, gentleman, died seized, and all houses, out-houses, gardens, and appurtenances to the same lots belonging, or in any wise appertaining; and also the reversion and reversions, remainder and remainders, rents, issues, and profits, and all the estate, right, title, interest, property, claim, and demand, of the said George William Fairfax, John Carlyle, and George Washington, as executors as aforesaid, of, in, and to the premises, and of, in, and to every part and parcel thereof. To have and to hold the said two lots of land, and all and singular the premises above mentioned, with the appurtenances, unto the said John Patterson, his heirs and assigns, to the only proper use and behoof of the said John Patterson, his heirs and assigns, forever. And the said George William Fairfax, John Carlyle, and George Washington, for themselves, their heirs and assigns, doth covenant, promise, and agree, to and with the said John Patterson, his heirs and assigns, that the said Laurence Washington, at the time of his death, was rightfully and lawfully seized of a good, sure, perfect, absolute, and indefeisible estate of inheritance, in fee simple, of and in the said lots of land, with the appurtenances; and that they, the said George William Fairfax, John Carlyle, and George Washington, by virtue of the last will and testament aforesaid, now have good right, full power, and absolute authority, to grant, bargain, sell, and convey the same lots of land, with the appurtenances, in manner aforesaid; and, also, that the said John Patterson, his heirs and assigns, shall and may from time to time, and at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy, all and singular the premises above mentioned to be hereby granted, with the appurtenances, without the

let, trouble, hinderance, molestation, eviction, interruption, or hinderance of them the said executors, and of all and every person or persons whatsoever, claiming or to claim by, from, or under their said testator, his heirs or assigns, themselves, their heirs or assigns. And, lastly, the said George William Fairfax, John Carlyle, and George Washington, for themselves, their heirs and assigns, doth covenant and grant, to and with the said John Patterson, his heirs and assigns, that the aforesaid lots of land, with all and singular the appurtenances, now are, and so forever hereafter shall remain and be, free and clear and exempt of and from all former and other gifts, grants, bargains, sales, wills, mortgages, dower, execution, judgments, titles, troubles, and incumbrances whatsoever, had made, committed, suffered, or done by the said testator in his lifetime; or to be had, made, committed, suffered, or done by the said executors, their heirs or assigns.

In witness whereof the said George William Fairfax, John Carlyle, and George Washington, hath hereunto set their hands and seals the day and year first above written.

GEO. WM. FAIRFAX, [SEAL.]
GEORGE WASHINGTON, [SEAL.]
JOHN CARLYLE. [SEAL.]

Signed, sealed, and delivered in presence of—
G. MASON,
BRYAN FAIRFAX,
PHILIP ALEXANDER.

Memorandum: That on the twentieth day of May, anno domini one thousand seven hundred and sixty, full possession and seizen was had and taken of the lots of land and premises within mentioned, to be granted by George William Fairfax, John Carlyle, and George Washington, executors of Laurence Washington, deceased, to John Patterson, to hold to him, the said John Patterson, according to the use, intent, and meaning of the within indenture, in presence of John Hunter, Richard Sanford, and Philip Alexander.

At a court held for the county of Fairfax, 20th May, 1760, George William Fairfax, John Carlyle, and George Washington, executors of the last will and testament of Laurence Washington, gentleman, deceased, acknowledged this deed, with the liberty of seizen, to be their acts and deeds, and ordered to be recorded.

Teste: P. WAGGONER, *Clerk C. C.*

A copy.—Teste:

S. M. BALL, *C. C.*

Deed—Patterson to Fitzgerald and Peers.

This indenture, made the 25th day of April, in the year of our Lord seventeen hundred and seventy-eight, between Susanna Patterson, widow and relict of John Patterson, late of the county of Fairfax, deceased, and William Patterson, eldest son and heir at law of the said John, of the one part, and John Fitzgerald and Valentine Peers, of the

town of Alexandria, in the Commonwealth of Virginia, of the other part; whereas the said John Patterson, in his lifetime, and at the time of his death, was seized in fee simple of and in two lots of land, situate in the said town of Alexandria, numbered fifty-one and fifty-two, and being so seized, by his last will and testament, in writing, did give the free use and occupation of the said two lots of land, with the appurtenances, unto the said Susanna during her life, to enable her to provide suitably for his, the said testator's, children; and after the decease of the said Susanna he directed the said two lots to be sold, and the money arising from the sale to be divided amongst his three children, as by the said will, duly proved and recorded in the clerk's office of the county of Fairfax, may more fully and at large appear; and whereas William Patterson, party to these presents, one of children named in the said will, and eldest son and heir at law of the said testator, hath now attained his lawful age of twenty-one years, and joining in opinion with his mother, the said Susanna, the other party to these presents, that it will redound to the benefit of all concerned to sell and dispose of the said two lots of land, with the appurtenances, at this time.

This indenture therefore witnesseth, that the said Susanna Patterson and William Patterson, for and in consideration of the sum of fourteen hundred pounds, Virginia currency, to them in hand paid by the said John Fitzgerald and Valetine Peers, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, they, the said Susanna Patterson and William Patterson, have granted, bargained, sold, aliened and confirmed, and by these presents do grant, bargain, sell, alien and confirm, to the said John Fitzgerald and Valentine Peers, the said two lots of land, numbered fifty-one and fifty-two, together with all houses, buildings, improvements, advantages, commodities, hereditaments and appurtenances whatsoever, to the same belonging, or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, use, trust, property, claim and demand, whatsoever, as well in equity as in law, of them, the said Susanna Patterson and William Patterson, of, in, and to the said premises, and all deeds, evidences and writings, tending or in any wise concerning the same. To have and to hold the said two lots of land above mentioned and described, and every part and parcel thereof, with the appurtenances, unto the said John Fitzgerald and Valentine Peers, and their heirs and assigns respectively, to their only proper use and behoof forever, as tenants in common, and not as joint tenants; and the said Susanna Patterson and William Patterson, for themselves, their heirs, executors, and administrators, do, by these presents, covenant and agree, to and with the said John Fitzgerald and Valentine Peers, their executors, administrators, and assigns, that they, the said Susanna Patterson and William Patterson, by virtue of the will aforesaid, have good right, full power, and lawful and absolute authority to grant and convey the same to the said John Fitzgerald and Valentine Peers in manner aforesaid, and that the said premises now

are, and so forever hereafter shall remain, and be free and clear of and from all former incumbrances, had, made, committed, done, or suffered, by the said Susanna Patterson and William Patterson, or any other person or persons whatsoever; and that the said Susanna Patterson and William Patterson, and their heirs, all and singular, the said two lots of land hereby bargained and sold, and every part and parcel thereof, with the appurtenances, unto the said John Fitzgerald and Valentine Peers, and their respective heirs forever, against them, the said Susanna Patterson and William Patterson, and their heirs, and against all and every other person and persons whatsoever, shall and will warrant and forever defend by these presents. And lastly, that the said Susanna Patterson and William Patterson, and their heirs, any thing having or claiming in the said premises hereby bargained and sold, shall and will, from time to time, and at all times forever hereafter, at the reasonable request and at the proper costs and charges in the law of them, the said John Fitzgerald and Valentine Peers, and their heirs respectively, make, do, and execute all and every such further and other lawful and reasonable act and acts, thing and things, conveyances and assurances whatsoever, for the further, better, and more perfect granting, conveying, and assuring the said premises to the said John Fitzgerald and Valentine Peers, and their heirs, as they, the said John Fitzgerald and Valentine Peers, or their heirs or assigns, shall reasonably require.

In witness whereof, the said Susanna Patterson and William Patterson have hereunto set their hands and seals, the day, month, and year first within written. SUSANNA PATTERSON, [SEAL.]
WM. PATTERSON. [SEAL.]

Sealed and delivered in the presence of—
DANIEL MCCARTY,
HUMPHREY PEAKE,
CLEON MOORE.

Received of John Fitzgerald and Valentine Peers the within mentioned sum of fourteen hundred pounds, Virginia currency, being the full consideration mentioned in the within deed to be paid by them to us on the perfection thereof, this 25th day of April, 1778.
WM. PATTERSON. [SEAL.]

Witness—
DANIEL MCCARTY,
HUMPHREY PEAKE,
CLEON MOORE.

At a court held for the county of Fairfax, 17th August, 1778, this deed and receipt was proved by the oaths of Daniel McCarty, Humphrey Peake, and Cleon Moore, to be the acts and deeds of Susanna Patterson and William Patterson, and ordered to be recorded.
Teste: P. WAGONER, *Clerk court.*

A copy.—Teste:
S. M. BALL, *C. C.*

Deed—Herberts to Dunlap and Irwin.

This indenture, made this 25th day of June, in the year of our Lord 1802, between Wm. Herbert and John C. Herbert, of the town of Alexandria, in the District of Columbia, of the one part, and Thomas Irwin and John Dunlap, of the same town, county, and district, of the other part; whereas Robert Townshend Hooe had, at the special instance and request of John Fitzgerald, lately deceased, become his security to the United States, in a bond in the penalty of ten thousand dollars, conditioned for the due and faithful discharge of the duties of collector of the District of Alexandria; and had also, at the like request, endorsed sundry notes drawn by the said John Fitzgerald, negotiable at the Bank of Alexandria, to the amount of three thousand eight hundred and forty dollars, which notes, by virtue of the said endorsements, he, the said John Fitzgerald, negotiated at the said bank, and drew the money thereout for his own use; and, in order to secure the said Robert Townshend Hooe as his security in the aforesaid bond to the United States, and as the endorser of the notes so drawn by him and negotiated at the Bank of Alexandria, the said John Fitzgerald and Jane, his wife, did, by their indenture bearing date the sixteenth day of January, 1799, grant and convey unto them, the said William Herbert and John C. Herbert, and their heirs forever, a piece or parcel of ground, situate, lying, and being upon the east side of Union street, and south side of King street, in the said town of Alexandria, and bounded as follows, to wit: Beginning at the intersection of the said streets, and running thence southwardly, with Union street, and binding therewith seventy-three feet, be the same more or less, to an alley thirty-feet wide; thence eastwardly, with a line parallel to King street, one hundred and twenty feet, be the same more or less, to the front of the wharf; thence northwardly, with a line parallel to Union street, the length of the first line, to King street; thence with that street, and binding therewith to the beginning, and pier adjoining to the front of the wharf, and all houses, landings, and docks thereupon erected, and thereto appertaining. In trust for the following purposes, that is to say, in case the said John Fitzgerald should fail to discharge the duties of collector of the said District of Alexandria, whereby the said Robert Townshend Hooe would become liable to pay the aforesaid bond of ten thousand dollars to the United States, or in case he should fail to satisfy and pay into the Bank of Alexandria, when thereto required, the amount of the notes so drawn and negotiated at the said bank by him, and endorsed by the said Robert Townshend Hooe; that, in either case, as soon as a demand should be made for the payment of either of the said sums of money of the said Robert Townshend Hooe, then the said Wm. Herbert and John C. Herbert should, as soon as notice of such demand being made was communicated, expose the said premises to sale at public auction, giving the most public notice of the time and place of such sale which the nature of the case would admit of. And whereas the said John Fitzgerald departed this life largely indebted to the United States for money received by him as collector of the said District, and a suit was by the

United States commenced against him upon the aforesaid bond; and also, leaving the whole aforesaid notes, so endorsed by the said Robert Townshend Hooe, and by him negotiated at the said bank, unsatisfied; after whose death payment was demanded of the executors of the said John Fitzgerald and the said Robert Townshend Hooe; and the said notes were, for non-payment, severally protested: In consequence of which several matters the said Robert Townshend Hooe required the said Wm. Herbert and John C. Herbert to make sale of the said premises, who advertised the same for sale, but were prevented from proceeding therein by an injunction at the suit of the United States, in which such proceedings were had that, at the last April term, held in the District of Columbia, for the county of Alexandria, it was decreed and ordered that William Herbert and John C. Herbert should proceed to make sale of the said premises as described in the said indenture, and pay the proceeds into the court; who, in pursuance of the said order, advertised the same for sale on the 19th day of June then next ensuing, on which day the same were exposed to sale for ready money; and the said Thomas Irwin and John Dunlap having offered fourteen thousand seven hundred and fifty dollars, and no person bidding more, the same were struck off to them. Now, this indenture witnesses, that the said William Herbert and John C. Herbert, by virtue of the said indenture, and in obedience to the said decree, and for and in consideration of the aforesaid sum of fourteen thousand seven hundred and fifty dollars to them in hand paid by the said Thomas Irwin and John Dunlap, at or before the sealing and delivery of these presents, the receipt whereof they do hereby acknowledge, have given, granted, bargained, sold, aliened and confirmed, and by these presents do give, grant, bargain, sell, alien and confirm, unto them, the said Thomas Irwin and John Dunlap, their heirs and assigns forever, all that piece of ground and pier thereto adjoined, conveyed by the said John Fitzgerald unto them, the said Wm. Herbert and John C. Herbert, and their heirs, by the aforesaid indenture bearing date the said 16th day of January, 1799, according to the metes and bounds in the said indenture expressed; and all houses, buildings, streets, lanes, alleys, landings, docks, profits, commodities, hereditaments, and appurtenances whatsoever to the said premises belonging, or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof. To have and to hold all and singular the said premises, with the appurtenances, unto them, the said Thomas Irwin and John Dunlap, their heirs and assigns, to the only proper use and behoof of them, the said Thomas Irwin and John Dunlap, their heirs and assigns forever; and the said Wm. Herbert and John C. Herbert do, for themselves, their heirs, executors, and administrators, covenant, grant, and agree, to and with the said Thomas Irwin and John Dunlap, their heirs and assigns, that they, the said Thomas Irwin and John Dunlap, their heirs and assigns, shall at all times forever hereafter occupy and possess all and singular the said premises, with the appurtenances, free and clear of and from any other grant, bargain, sale,

title, or incumbrance whatsoever, made thereupon by them, the said Wm. Herbert and John C. Herbert.

In witness whereof the said Wm. Herbert and John C. Herbert have hereunto set their hands and seals, the day and year first herein before mentioned.

WM. HERBERT, [SEAL.]
J. C. HERBERT. [SEAL.]

Sealed and delivered in presence of—
JONATHAN SWIFT,
JAMES M. STUART,
DENNIS MCCARTY JOHNSTON.

Received of Thomas Irwin and John Dunlap fourteen thousand seven hundred and fifty dollars, the consideration within mentioned.

WM. HERBERT,
JOHN C. HERBERT.

Witness—
JONA. SWIFT,
DENNIS MCCARTY JOHNSTON.

At a circuit court of the District of Columbia, continued and held for the county of Alexandria, the 29th day of June, 1802, Wm. Herbert and John C. Herbert acknowledged this deed and receipt, to John Dunlap and Thomas Irwin, to be their act and deed, and ordered to be recorded.

Teste: G. DENEALE, *Clerk.*

A copy.—Teste:

C. F. LEE, *C. C.*

Deed—Dunlap and wife to Irwin.

This indenture, made this sixth day of May, 1809, between James Dunlap and Nancy his wife, Kershaw county, in the State of South Carolina, of the one part, and Thomas Irwin, of Alexandria, in the District of Columbia, of the other part; whereas John Dunlap, late of Alexandria, in the district aforesaid, was with the said Thomas Irwin jointly seized in fee simple under a deed of bargain and sale from Wm. Herbert and John Carlyle Herbert, dated the fifth day of June, 1802, of certain lot of ground, wharf, and pier, with the warehouses and buildings thereupon, in the said town of Alexandria, bounded and described as follows: lying on the south side of King street, and on the east side of Union street, beginning at the intersection of the said streets, and running thence southwardly on Union street seventy-three feet, be the same more or less, to an alley thirty feet wide; thence eastwardly, parallel to King street, one hundred and twenty feet, be the same more or less, to the front of the wharf; thence northwardly, parallel to Union street, the length of the first line to King street; thence with that street to the beginning, and the pier adjoining to the front of the wharf; and whereas the said John Dunlap having died intestate as to the said pro-

perty, his moiety thereof descended to the said James Dunlap and Samuel Dunlap, his heirs at law, subject to the dower of Elizabeth, widow of the said John; and the said Samuel having since conveyed his interest to the said James in the said property by deed dated the 29th day of September, in the year 1808, the said James now claims title to the whole of the said undivided moiety of the said property.

Now this indenture witnesseth, that the said James Dunlap and Nancy his wife, in consideration of the sum of three thousand dollars to him, the said James, in hand paid by the said Thomas Irwin, of which the receipt is hereby acknowledged, and in pursuance of and subject to certain articles of agreement between the same parties of equal date herewith, to which reference is had, have granted, bargained and sold, aliened and confirmed, and do by these presents, grant, bargain and sell, alien and confirm, unto him, the said Thomas Irwin, the said undivided moiety or half part of the said lot of ground, wharf, pier, warehouses, buildings and improvements, whereof the said John Dunlap died seized, together with all privileges and appurtenances to the same in any manner belonging.

To hold to the said Thomas Irwin, his heirs and assigns, to his and their only use forever, subject nevertheless to the dower of Elizabeth, widow of the said John Dunlap, deceased; and the said James Dunlap does for himself, his heirs, executors and administrators, hereby covenant with the said Thomas Irwin, his heirs and assigns, as follows, that is to say: That he, the said James, is now seized of a good, sure, absolute and indefeisible estate of inheritance in fee simple, free from all conditions, limitations, and encumbrances other than the rights of dower of the said Elizabeth, in and to the premises conveyed, and that he hath done no act by which the said premises may be charged or the title impaired; and further, that he and his heirs will at all times hereafter, on the request and at the costs of the said Thomas Irwin, his heirs or assigns, execute and deliver such other and further assurances and conveyances, as may be necessary more completely and effectually to transfer the premises hereby intended to be conveyed to the said Thomas Irwin, his heirs or assigns.

And lastly, that he, the said James Dunlap, and his heirs, all and singular the premises conveyed to the said Thomas Irwin, his heirs and assigns, will forever warrant and defend against the claims and demands of all persons whatever, other than the right and claim of dower of the said Elizabeth, widow of the said John Dunlap, deceased.

In testimony of which the said James Dunlap and Nancy, his wife, have hereunto set their hands and seals the day and year first before written.

JAMES DUNLAP, [L. S.]
THO. IRWIN. [L. S.]

Sealed and delivered in the presence of—
R. I. TAYLOR,
CHARLES LEE,
THOMAS SWANN.

At a United States circuit court of the District of Columbia, continued and held for the county of Alexandria, the 12th day of July, 1809, this deed from James Dunlap and Nancy, his wife, to Thomas Irwin, was proved by the oaths of Charles Lee and Robert I. Taylor, to be the act and deed of the said James Dunlap and Thomas Irwin, and ordered to be certified.

And at the same court, continued and held for the district and county aforesaid, the first day of August, 1809, this deed was further proved by the oath of Thomas Swann to be the act and deed of the said James Dunlap and Thomas Irwin, and ordered to be recorded.

Teste: G. DENEALE, *Clerk.*

A Copy.—Teste: C. F. LEE, *C. C.*

Deed—Catlett, trustee, to Irwin.

This indenture, made this 17th day of July, in the year of our Lord 1813, between Charles J. Catlett, of the town and county of Alexandria, in the District of Columbia, trustee of Samuel Dunlap, an insolvent debtor of the one part, and Thomas Irwin, of the town, county, and district aforesaid, of the other part, witnesses: whereas, the said Samuel Dunlap did, on the 31st day of December, in the year of our Lord 1808, take the benefit of the act of Congress for the relief of insolvent debtors in [the] District of Columbia, and did in pursuance of said act convey, by an indenture of the same date, (which is now of record in the county court of Alexandria,) to the said Charles J. Catlett, as trustee aforesaid, all his property, real, personal, and mixed, of which real property the hereinafter described premises, lying in the town and county of Alexandria, and by this indenture intended to be conveyed, are a part; and whereas the said Samuel Dunlap had, on the 29th day of September, 1809, made a fraudulent conveyance of all his property to his brother James Dunlap, of South Carolina, to set aside which conveyance the said Charles J. Catlett, as trustee, brought his bill in equity on behalf of the creditors of the said Samuel Dunlap in the United States circuit court, of the District of Columbia, for the county of Alexandria, which conveyance the said court, at a session held November term, 1812, decreed to be void as to the real estate of the said Samuel Dunlap lying within the said county; and whereas, in pursuance of the said act of Congress for the relief of insolvent debtors in the said District of Columbia, an order was signed by the honorable Nicholas Fitzhugh, for a sale to be made of the said property by the said trustee; and whereas, agreeably to the said order, the said trustee did proceed to sell the same on Saturday, the 17th day of July, on the premises, at public auction, for ready money, when and where the same was struck off to the said Thomas Irwin, as the highest bidder, for the sum of five thousand three hundred and sixty dollars.

Now, this indenture witnesses, that the said Charles J. Catlett, trustee aforesaid, for and in consideration of the said sum of five thousand three hundred and sixty dollars, to him in hand paid by the said Thomas Irwin, at and before the sealing and delivering of these presents,

the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released and confirmed, and by these presents do grant, bargain and sell, alien, release and confirm, unto the said Thomas Irwin, his heirs and assigns forever, the undivided fourth part of a piece or parcel of ground, now occupied by the said Thomas Irwin, situate, lying, and being on the east side of Union street, and to the south side of King street, in the said town of Alexandria, and bounded as follows, to wit: Beginning at the intersection of said streets, and running thence southwardly with Union street, and binding therewith 73 feet, be the same more less, to an alley 30 feet wide; thence eastwardly, with a line parallel to King street 120 feet, be the same more or less, to the front of the wharf; thence northwardly, with a line parallel with Union street, the length of the first line to King street; thence with that street and binding therewith to the beginning, and the pier adjoining to the front of the wharf, with all houses, landings, buildings, or docks thereto belonging or in any manner appertaining; which said property was conveyed to the said Thomas Irwin and John Dunlap, as joint tenants, by Wm. Herbert and John C. Herbert, trustees of John Fitzgerald, by indenture bearing date the 25th June, 1802, now of record in the county court of Alexandria, liber C, folio 73; a moiety of which the said John Dunlap died seized, which moiety descended to his heirs at law, his two brothers, James Dunlap, of South Carolina, and the said Samuel Dunlap, to have the said undivided fourth part of the said premises, with the appurtenances thereto belonging, unto him, the said Thomas Irwin, his heirs and assigns, to his and their only use forever; and the said Charles J. Catlett, for himself and his heirs, doth covenant, to and with the said Thomas Irwin, that he has not in any manner incumbered the hereby granted premises, with their appurtenances, and doth warrant them free and clear of any contract, deed, or conveyance, made to any person or persons whomsoever.

In testimony whereof, the said Charles J. Catlett, trustee aforesaid, hath hereunto set his hand and seal the day and year first before written.

CHARLES J. CATLETT. [SEAL.]

Sealed and delivered in the presence of —
BENJ. C. ASHTON,
WM. HERBERT, JR.,
J. L. McKENNA,
C. M. IVER.

Received 17th July, 1813, of Mr. Thomas Irwin, five thousand three hundred and sixty dollars, being the full amount of the within consideration.

CHAS. J. CATLETT.

Witness—
WM. HERBERT, Jr.

At a United States circuit court of the District of Columbia, continued and held for the county of Alexandria, the 24th day of Novem-

ber, 1813, Charles J. Catlett, trustee of Samuel Dunlap, an insolvent debtor, acknowledged this deed to Thomas Irwin to be his act and deed, which is ordered to be recorded.

Test: G. DENEALE, *Clerk.*

A copy—Test: C. F. LEE, *C. C.*

Deed—Irwin and wife to Tho. Irwin. [*Trust.*]

This indenture, made this 1st day of August, in the year 1832, between James Irwin and Ann, his wife, of the town of Alexandria, in the District of Columbia, of the one part, and Thomas Irwin, jr., of the city of Baltimore, in the State of Maryland, of the other part. Whereas Elizabeth Irwin, of the town of Alexandria, has endorsed a note drawn by James Irwin & Co., (which firm is composed of the said James Irwin and William H. Irwin,) for eight thousand two hundred and fifty-five dollars, dated July 24, 1832, payable at sixty days, and discounted in the Bank of Alexandria, and has also endorsed a note, drawn by James Irwin and William H. Irwin, copartners under the firm of J. and Wm. H. Irwin, for three thousand dollars, dated July 27th, 1832, payable at sixty days, and discounted in the Bank of Potomac; both of which notes are for the use and accommodation of the said James Irwin & Co., and J. and Wm. H. Irwin. And whereas the said James and William H. Irwin, and the said James Irwin & Co., may from time to time procure a renewal of the said notes, or of some portion thereof, to be endorsed by the said Elizabeth; and whereas the said Elizabeth may hereafter endorse for the benefit of the said firms of J. and Wm. H. Irwin and of the said James Irwin & Co., other notes and drafts, and may from time to time substitute her endorsements on the paper of the said firms, or either of them, by way of renewal of such notes or drafts, or some part thereof, and may also make loans and advances of money to the said firms, or either of them; and whereas the said James Irwin hereby intends to indemnify and save harmless the said Elizabeth, her heirs, executors, and administrators, against all claim, demand, and liability whatever, which she may incur or be subject to by reason of the premises, and also for any default by the said firms in the payment of the said notes, drafts, loans, and advances. Now this indenture witnesses, that the said James Irwin and Ann, his wife, as well for the purpose before expressed, as in consideration of one dollar to them paid by the said Thomas Irwin, jr., of which receipt is hereby acknowledged, have granted, bargained and sold, aliened and confirmed, and by these presents do grant, bargain, sell, alien, and confirm, to the said Thomas Irwin, jr., his heirs and assigns forever, all his, the said James Irwin's right, title, and interest whatsoever, of, in, and to the real estate and ground rents of which his father, the late Thomas Irwin, of the town of Alexandria, died seized or possessed, and which were devised by the said Thomas Irwin to his children. Also one undivided moiety of certain tenements and lots of ground, with the appurtenances thereto belonging, conveyed to the said James Irwin and William H. Irwin, by James Entwisle and Eliza, his wife, by deed bearing date the 13th day of September, 1831, recorded in the circuit court for the county of

Alexandria, and which is now occupied by the said James Irwin & Co.; also all the interest and property of him, the said James Irwin, in the vessels, casks, stands, fixtures, tools, implements, utensils, and furniture, belonging to the brewery now conducted and carried on by the said J. Irwin & Co. Also one lot or parcel of ground in the county of Alexandria, adjoining the town of Alexandria, on the west side of the Georgetown road, containing about nine acres and seventy-two poles, and conveyed to the said James Irwin by Thomas Irwin, jr., executor of Thomas Irwin, deceased, by deed bearing date the 17th day of February, 1831. To have and to hold the said real and personal property before described, to the said Thomas Irwin, jr., his heirs and assigns, to his only proper use forever; in trust however for the following purposes, and none other, that is to say, to permit the said James Irwin, his heirs and assigns, to retain possession and to receive the rents and profits without account, until a sale become necessary under the terms of this deed; and if the said James Irwin shall at any time hereafter make default in the payment of any note or draft endorsed by the said Elizabeth Irwin, for the use and accommodation of the above mentioned firms of J. and Wm. H. Irwin and of James Irwin & Co., or any renewals thereof, or obligations substituted therefor, or of any discount or curtailment thereon, or interest, or of any advances or loans of money to or for the use of the said firms, or either thereof; then that the said Thomas Irwin, jr., or his heirs, shall, on the request of the said Elizabeth Irwin or her representatives, proceed to sell the premises before described at public auction, for cash, or on such credit as the parties concerned may direct; and after defraying all reasonable expenses and charges attending the sale, shall, out of the money thence to arise, pay to the holders of such notes or drafts as above described, whatever sums may be due to them or any of them, on account of principal, interest, costs, and charges, and shall then refund, with interest, to the said Elizabeth, or her representatives, whatever she or they may have paid thereon; and also all monies, loans, or advances, by her to the said firms or either of them, according to the intent and meaning hereof, having first advertised the time and place of sale for sixty days in some paper printed in the town of Alexandria; and if any balance remain shall pay over the same to the said James Irwin, his heirs or assigns, and shall convey the premises sold to the purchaser or purchasers. Provided always, and on this condition, that if the said James Irwin, his heirs or assigns, shall at any time before sale actually made, fully relieve, take up, and pay all notes and drafts whatever drawn by the said J. and Wm. H. Irwin, and the said James Irwin & Co., and endorsed by the said Elizabeth, and shall also pay the said Elizabeth whatever sums of money she may have advanced or loaned to the said firms, or either of them, and on the account of either of them, and shall also pay all costs and charges which shall have accrued under this instrument, then this indenture shall become void, and all the estate hereby granted shall cease and determine.

And the said James Irwin, for himself and his heirs, executors, and

administrators, does hereby covenant with the said Thomas Irwin, jr., his heirs and assigns, that the said James Irwin is at the time of the delivery hereof seized in possession of a perfect and absolute estate in fee simple in the premises conveyed, free from condition, charge, right, or possibility of dower or other incumbrance whatsoever, except the dower right of the said Elizabeth Irwin; and that he and his heirs will at any time hereafter, at the request and cost of the said Thomas Irwin, his heirs or assigns, execute and deliver any further reasonable conveyances, which may be necessary more fully to transfer the title to the premises before described to the said Thomas Irwin, his heirs or assigns, according to the true intent and meaning hereof; and lastly, that he, the said James Irwin and his heirs, the said premises before described, will warrant and forever defend to the said Thomas Irwin, his heirs and assigns, against the claims and demands of all persons whatever. And the said Thomas Irwin, for himself and his heirs, does hereby covenant with the said James Irwin, his heirs and assigns, and the said Elizabeth Irwin, that the said Thomas Irwin, and his heirs will faithfully execute and carry into full effect the several trusts hereby created.

In witness whereof, the parties to this indenture have hereunto set their hands and seals the day and year first before written.

JAS. IRWIN, [SEAL.]
ANN M. IRWIN, [SEAL.]
TH. IRWIN, Jr. [SEAL.]

Sealed and delivered in presence of—

DISTRICT OF COLUMBIA,
Alexandria county, set:

The United States of America, to A. Lynn, K. Keene, and J. [L. S.] Shillebar, gentlemen, justices of the county of Alexandria, greeting:

Whereas, James Irwin and Ann Irwin, his wife, by certain indenture of bargain and sale in trust, bearing date the day of August, 1832, have sold and conveyed unto Thomas Irwin, jr., of Baltimore, the fee simple estate of him, the said James Irwin, in the estate devised to him by his father Thomas Irwin, and in the ground rents so devised, and also one undivided moiety of certain real estate purchased by James Irwin and Wm. H. Irwin, of James Entwisle and wife, by deed bearing date the 30th day of September, 1831, and by them held as tenants in common; also one lot of ground on the west side of the Georgetown road, near the town of Alexandria, containing nine acres and seventy-two poles, with the appurtenances, situate, lying, and being in the county of Alexandria; and whereas the said Ann Irwin cannot conveniently travel to our United States circuit court of the District of Columbia, for the county of Alexandria, to make acknowledgment of the said conveyance; therefore we do give unto you, or any two or more of you, power to receive the acknowledgment which the said Ann Irwin shall be willing to make before you of the conveyance aforesaid, contained in the said indenture, which is hereunto annexed. And we do

therefore desire you, or any two or more of you, to go to the said Ann Irwin and receive her acknowledgment of the same, and examine her privily and apart from the said James Irwin, her husband, whether she doth the same freely and voluntarily without his persuasion or threats; and whether she be willing the said indenture, together with this commission, shall be recorded in our said court; and when you have received her acknowledgment, and examined her as aforesaid, that you distinctly and openly certify us thereof in our said court, under your hands and seals, sending there the said indenture and this writ.

Witness the honorable William Cranch, chief judge of the said court, this day of August, 1832.

EDM. I. LEE, *C. C.*

DISTRICT OF COLUMBIA, *to wit:*

To the honorable the United States judges of the circuit court of the District of Columbia, the subscribers, justices of the peace for the county of Alexandria, do respectfully certify, that under the authority of this commission, we examined Ann Irwin, wife of James Irwin therein named, privily and apart from her said husband, respecting her execution of the indenture annexed and within described, which we shewed and explained to her; on which examination she acknowledges that she had willingly of her own accord signed and sealed the same, and consented to its being duly recorded.

Certified under our hands and seals this 19th day of September, 1832.

ADAM LYNN, [SEAL.]
NEWTON KEENE. [SEAL.]

STATE OF MARYLAND,
Baltimore city, in Baltimore county, sct:

We, the undersigned, justices of the peace in and for the city aforesaid, in the State aforesaid, do hereby certify, that Thomas Irwin, jr., of the city of Baltimore, in the State aforesaid, who is personally known to us and each of us, and who is a party grantee in the within and annexed deed of bargain and sale, in trust from James Irwin and Ann M. Irwin, his wife, of the town of Alexandria, in the District of Columbia, bearing date the first day of August, in the year one thousand eight hundred and thirty-two, this day personally appeared before us, in our city, in the county aforesaid, and acknowledged his execution and delivery of the said deed, and desired us to certify his said acknowledgment to the United States circuit court of the District of Columbia, for the county of Alexandria, in order that the said deed may be recorded.

Given under our hands and seals this 4th day of October, in the year one thousand eight hundred and thirty-two.

JOS. J. OGDON, [SEAL.]
FIELDER ISRAEL. [SEAL.]

STATE OF MARYLAND,
Baltimore county, sct:

I hereby certify that Joseph J. Ogden and Fielder Israel, gentlemen, before whom the above acknowledgment was made, and who have

thereto subscribed their names and affixed their seals, were, at the time of so doing, two justices of the peace in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof, I hereto set my hand and affix the seal of [L. S.] Baltimore county court, this 4th day of October, 1832.

ARAD ISRAEL,
Clerk Baltimore county court.

At an United States circuit court of the District of Columbia, continued and held for the county of Alexandria, the 12th day of November, 1832, this deed, from James Irwin and wife to Thomas Irwin, jr., in trust, was acknowledged by the said James Irwin to be his act and deed, and together with a commission for the privy examination of Ann M. Irwin, wife of said James, and the return thereon, was ordered to be recorded.

Test: EDM. I. LEE, *C. C.*
A copy—Test: C. F. LEE, *C. C.*

James Irwin and wife to W. L. Hodgson, trust.

This indenture, made this 20th day of April, in the year eighteen hundred and thirty-five, between James Irwin and Ann D. Irwin, his wife, of the town of Alexandria, of the one part, and William L. Hodson of the same place, of the second part; whereas the said James Irwin is indebted to the firm of J. and W. H. Irwin, and of James Irwin & Co., which said firms are composed of the said James Irwin and of William H. Irwin. And whereas the said firms have outstanding obligations and liabilities for which the said James and William are equally bound, and which the said William may be compelled to discharge; and whereas the said William is also responsible for certain debts incurred by the said James for the sole account of the said James; and the said William H. Irwin has required the said James Irwin to indemnify and secure him, the said Wm. H. Irwin, in the premises, and the said James is willing so to do. Now this indenture witnesseth, that the said James Irwin and Ann D., his wife, for the purposes aforesaid, and in consideration of the sum of one dollar, to them in hand paid by the said William L. Hodgson at or before the sealing of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, and confirmed, and do hereby grant, bargain, sell, alien, enfeoff, and confirm, to the said William L. Hodgson, his heirs, executors, and administrators, all the real estate of him, the said James Irwin, whether in severalty or otherwise, in the town and county of Alexandria, in the District of Columbia, subject to existing liens and trusts thereon, of record in the circuit court, and all his interest in the stock in trade held by the said firms of J. and W. H. Irwin and the said James Irwin & Co.; and also all utensils and tools and implements for the carrying on the business of brewing and malting, and all horses, carts, drays, gear, and harness belonging to the said firms of James Irwin & Co. and of J. and W. H. Irwin. To have and to hold all and singular the same, to the said William L. Hodgson, his heirs, execu-

tors, and administrators; in trust, however, for the following uses and purposes, that is to say, to permit the same to remain in the use and possession of the said firms until a sale shall become necessary under the terms of this deed; and upon default upon the part of the said James Irwin, his heirs, executors, and administrators, fully to pay to the said William H. Irwin, his executors and administrators, the debt now due to him and the interest thereon; and also to pay the debts due by him, the said James, to the firms of J. and W. H. Irwin and James Irwin & Co., or so much thereof as the said Wm. H. Irwin, as a partner thereof, may be entitled to; and also to release, indemnify, and discharge the said William H. Irwin from his, the said James Irwin's, moiety of all the outstanding obligations and liabilities of the said two firms of which they are partners, when thereto required by the said William H. Irwin, his executors, and administrators, then the said William L. Hodgson and his heirs shall proceed upon the demand of the said William H. Irwin, his executors, and administrators. to sell at public auction for cash, or on such credit as the parties concerned may direct, all the real estate of him, the said James Irwin, or so much thereof as may be necessary, and his interest in the personal estate hereby conveyed, having advertised the time and place of sale of the same for twenty days in some newspaper printed in the town of Alexandria; and after deducting all costs, expenses, and charges attending the execution of this trust, shall then pay over to the said William H. Irwin, his heirs, executors, and administrators, whatever sum of money he or they may be entitled to under the terms and provisions of the deed, and the balance, if any, the said Hodgson shall pay to the said James Irwin, his executors, administrators, and assigns; and the said Hodgson or his heirs shall convey the said real estate sold by him under the provisions of this deed to the purchaser or purchasers thereof.

In witness whereof, the parties hereto have set their hands and seals the day and year before written

JAMES IRWIN, [SEAL.]
WM. LUDWELL HODGSON. [SEAL.[

Sealed and delivered in presence of—
PETER HEWITT,
JAMES ENTWISLE,
EDGAR FINLEY.

At a United States circuit court of the District of Columbia, continued and held for the county of Alexandria, the tenth day of May, 1835, this deed from James Irwin to William L. Hodgson, was acknowledged by the parties to be their act and deed, and ordered to be recorded.

Test: EDM. I. LEE, *C. C.*
A copy—Test: C. F. LEE, *C. C.*

Wm. H. Irwin and Ann B. Patton to Peter E. Hoffman—marriage settlement.

This indenture, made this 3d day of October, in the year 1839, between Wm. H. Irwin, of the first part, Ann B. Patton, of the second

part, and Peter E. Hoffman, of the third part, all of the town of Alexandria, in the District of Columbia; whereas a marriage is now contemplated, and is shortly to be had and solemnized, between the said Wm. H. Irwin and Ann B. Patton; and whereas the said Ann B. Patton is now seized and possessed of considerable real estate, which it has been agreed between her and the said Wm. H. Irwin shall be settled to her sole and separate use, free from the debts, liabilities, power, and control of the said Wm. H. Irwin, with power to the said Ann B. Patton to dispose of the same by appointment or devise, notwithstanding said intended marriage; and whereas the said Wm. H. Irwin has agreed to add to the same the following real estate, in the said town of Alexandria, to be settled upon her in like manner as her said real estate, viz: The warehouse and lot of ground on the east side of Union street to the southward of King street, allotted to the said Wm. H. Irwin in the partition of the real estate of his father, Thomas Irwin, deceased, among his children, by deed dated the 15th day of January, 1835, duly recorded in liber V, No. 2, page 305, of the land records of Alexandria county, and called in said partition "the centre warehouse." Also one undivided third part of the wharf, pier, and dock lying to the east of the aforesaid lot of ground, and the ground adjoining the same, on the north and south, allotted in said partition to Jas. Irwin, the brother, and Ann J. Carey, the sister, of the said Wm. H. Irwin; the said undivided third part of the said wharf, pier, and dock being also allotted to the said Wm. H. Irwin in said partition; also the house and lot on King street hereinafter described.

Now this indenture witnesses, that the said Wm. H. Irwin, in fulfilment of said agreement, and for and in consideration of the premises, and of the sum of one dollar to him in hand paid by the said Peter E. Hoffman, the receipt whereof is hereby acknowledged, does hereby give, grant, bargain, and sell, to the said Peter E. Hoffman, the warehouse and lot of ground aforesaid, with all the provisoes, understandings, benefits, rights, and advantages, in said deed of partition set forth and contained, in connection with the same, and thereby required of, or granted, or allotted to the said William H. Irwin; also the said undivided third part of the said wharf, pier, and dock, with all rights, privileges, and appurtenances to the same in any wise belonging; also a house and lot of ground on the north side of King street, to the eastward of Washington street, conveyed to the said Wm. H. Irwin by George Carter, by deed dated the 17th July, 1836, duly recorded in liber V, No. 2, page 532, of the land records aforesaid. And the said Ann B. Patton, in fulfilment of the agreement aforesaid, and for and in consideration of the premises, and of the sum of one dollar to her in hand paid by the said P. E. Hoffman, the receipt whereof is hereby acknowledged, does hereby grant, bargain, and sell, to the said P. E. Hoffman, the following described tenements and lots of ground in the said town of Alexandria, with all rights and appurtenances to the same belonging, namely: A house and lot of ground in the said town of Alexandria, on the north side of King street, between Columbus and Alfred streets,

(subject to a rent charge of twenty dollars per annum forever,) conveyed to her by R. I. Taylor, and others, trustees of the Mechanic's Bank of Alexandria, by deed dated the 1st day of October, 1839, duly recorded in liber A, No. 3, folio 4, of the land records aforesaid; also a house and lot of ground on the south side of King street, to the eastward of Patrick street, conveyed to her by John W. Massie, trustee of Jona. Butcher, by deed dated the 30th day of September, 1839, duly recorded in liber A, No. 3, page the first, of the land records aforesaid; also a house and lot of ground on the east side of Pitt street, between Duke and Wolfe street, devised to her by her aunt, Ann Patton, deceased; also a lot of ground on the east side of Columbus street, and north side of Queen street, at their intersection; also a lot of ground on the east side of Columbus street, and north side of Princess street, at their intersection; also a quarter square or half acre lot of ground on the east side of Patrick street, and north side of Wilkes street, at their intersection; and all other real estate of which the said Ann B. Patton may now be seized or possessed, or to or in which she may have any right, title, or interest, or which may during said marriage come by descent, or be devised to her. To have and to hold all and singular the real estate, rights, privileges, and appurtenances, herein before conveyed, as well by him, the said Wm. H. Irwin, as by her, the said Ann B. Patton, to him, the said Peter E. Hoffman, his heirs and assigns, to their only proper use forever. Upon the trust, and for the uses, intents, and purposes, hereinafter mentioned, and none other, that is to say: In trust for the parties conveying the same respectively, and their heirs, until the solemnization of the said intended marriage. And from and after the solemnization of the same, then in trust, that the said Peter E. Hoffman, his heirs, executors, and administrators, do and shall permit the said Ann B. Patton, the said intended wife, to have, receive, take, and enjoy all the issues, benefits, rights, rents, and profits of the said hereby conveyed lands and tenements, to and for her own separate use and benefit, and free from the debts, liabilities, power, and control of the said Wm. H. Irwin, her said intended husband, as fully as if she were sole and unmarried, and to and for the use and benefit, namely, the said lands and tenements, as well as the said issues, rights, benefits, rents, and profits thereof, of such person or persons, and in such parts or portions, and for such interests and estates, as she, the said Ann B. Patton, the said intended wife, from time to time, during her said coverture, by any writing under her hand and seal, attested by three credible witnesses, shall direct and appoint; or as she, by her last will and testament, executed, published, and declared in the presence of three credible witnesses, may devise or bequeath them to; and for and in default of such direction or appointment, and devise or bequest, then the property and estate hereby conveyed by the said Ann B. Patton to go and descend to her right heirs; and the property and estate hereby conveyed by the said William Irwin to go or descend to himself or his right heirs.

And the said Wm. H. Irwin, and the said Ann B. Patton, do here-

by authorize and empower the said Peter E. Hoffman, and his heirs, in his or their own name or names, as trustee or trustees as aforesaid, to enter into, seal, deliver, and fully effectuate partition, either by suit, as parties complainant or defendant, or by deed, of any of the hereby lands or tenements held jointly or in common with others, and to take and hold in severalty, upon the trusts, and for the uses and purposes herein before set forth and declared, such part or parts thereof as may be so allotted to him or them in any such partition.

In witness whereof, the parties have hereto set their hands and seal the day and year first herein written.

WM. H. IRWIN, [SEAL.]
ANN B. PATTON, [SEAL.]
P. E. HOFFMAN. [SEAL.]

Sealed and delivered in presence of—
JAMES CARSON,
ALEX'R WAUGH.

ALEXANDRIA COUNTY, *ss:*

We, James Carson and Alexander Waugh, justices of the peace in and for the county aforesaid, in the District of Columbia, do hereby certify, that William H. Irwin, Ann B. Patton, and Peter E. Hoffman, parties to a certain deed bearing date on the 3d day of October, 1839, and hereto annexed, personally appeared before us, in our county aforesaid; the said Peter E. Hoffman, William H. Irwin, and Ann B. Patton, being personally well known to us as the persons who executed the said deed, and acknowledged the same to be their act and deed.

Given under our hands and seals, this 7th day of October, 1839.

JAMES CARSON, [L. S.]
ALEX. WAUGH. [L. S.]

Clerk's office, Alexandria county, October 19th, 1839; this deed received for record this day.

Test: EDM. I. LEE, *C. C.*

A copy.—Test:

C. F. LEE, *C. C.*

List of assessments filed by defendant.

List of assessments.

1819	Thos. Irwin—h's and lot, and wh'f to channel -	$25,000
1820	Thomas Irwin—h's and lot, wh'f to channel -	25,000
1821	Thomas Irwin—h's and lot, wharf to channel, Union - - - - - -	25,000
1822	Thomas Irwin—houses and lot, wharf to channel, Union - - - - - -	25,000
1823	Thomas Irwin—h's and lot, wh'f to channel -	25,000
1824	Thomas Irwin—h's and lot, wh'f to channel -	25,000
1825	Thomas Irwin—h's and lot, to channel - -	25,000
1826	Thomas Irwin—l. wareh's and wharf - -	25,000
1827	Thos. Irwin's estate—w. h's and wh'f, Union to the river (occupants "his heirs,") - -	25,000
1828	Thomas Irwin's estate—warehouse and lots Union to wharf - - - - -	27,000
1829	Thomas Irwin's estate—3 wareh's and wharf Union to river - - - - - -	27,000
1830	Thomas Irwin's estate—wharf and wareh's -	30,000
1831	Thomas Irwin's est.—wareh's and wharf - -	30,000
1832	Thomas Irwin's est.—wareh's and wharf - -	30,000
1833	Thomas Irwin's est.—warehouses and wharf -	30,000
1834	Thomas Irwin's est.—warehouses and wharf -	30,000
1835	In this year assessment divided as follows:	
	Mary Irwin—wareh's Union - - $3,000	
	Wm. H. Irwin " King - - 4,000	
	" middle wareh's - - 4,000	
	Thomas Irwin—wareh's Union and Alley 3,000	
	John E. Carey—wareh's Dock street - 4,000	
	J. & W. H. Irwin—wharf and pier - 12,000	
		30,000
1836	Same as in 1835,	
1837	Warehouses as in 1835—"wharf" to J. & W. H. Irwin - - - - - -	12,000
1838	Same as in 1837,	
1839	Same as in 1838,	
1840	Same as in 1839,	
1841	Same as in 1840,	
1842	Same as in 1841,	
1843	Elizabeth and Wm. H. Irwin & Carey, wharf King - - - - - -	12,500

On the other side is a correct statement of the assessment of the property therein mentioned, for the years therein mentioned, taken from the assessor's returns in my office.

Given under my hand, this 9th of October, 1846.

R. JOHNSTON, *Auditor & C. C.*

Admitted in lieu of the original books.

FRANCIS L. SMITH,
For complainants.

Wm. H. Irwin appointed agent by Careys.

We, the undersigned, part owners and trustees of the wharf property and pier at the lower end of King street, (on the south side,) in the town of Alexandria, do hereby appoint William H. Irwin our agent for the management and repair of the same, as he may think best for our interest, until notice be given to him to the contrary. Alexandria, September 1st, 1844.

ANN J. CAREY,
JOHN E. CAREY.

Baltimore, November 12th, 1844.

Proof of the handwriting to the above paper admitted, but every other exception reserved.

FRANCIS L. SMITH,
October 30, 1846. *For complainants.*

W. H. IRWIN,

DR. SIR: After Mr. Johnson finishes the re-entry on Naylor's hill, I wish you would rent the property to the person that applied for it at your compting room; I do not recollect his name. He can take it for $75 per annum, payable every 4 months, $\frac{1}{3}$ of annual rent; I do not wish to lease it for 5 years. Please state to me the best you can do with this property. I will let you know in regard to your applications for insurance as soon as I can hear from them.

Yours, resp'y.
JOHN E. CAREY.

Baltimore, Nov. 12, 1844.

Wm. H. Irwin's appointment as agent by Eliz. & Ann B. Irwin.

We, the undersigned, owners and trustees of the wharf property and pier at the lower end of King street, (on the south side,) in the town of Alexandria, do hereby appoint William H. Irwin our agent for the management and repair of the same, as he may think best for our interests, until notice be given to him to the contrary. Alexandria, September 1st, 1844.

ELIZABETH IRWIN,
ANN B. IRWIN.

Proof of the handwriting to the above paper admitted, but every other exception reserved.

FRANCIS L. SMITH,
October 30th, 1846. *For complainants.*

BALTIMORE, *September* 14, 1844.

DEAR WILLIAM,

In reply to yours of the 6th inst., as I am a joint owner with you in

the wharf, I am willing to unite with you in defending our title thereto against Dixion and all other persons; lawyers' fees I cannot pay, I am not able; those you must attend to.

ANN J. CAREY.

Proof of the handwriting admitted, but every other exception reserved.

FRANCIS L. SMITH, *for deft's.*

October 30*th*, 1846.

Will of Thomas Irwin.

In the name of God, amen. I, Thomas Irwin, being of sound mind and disposing memory, do make this my last will and testament, revoking all others.

It is my will and desire that all my estate, real, personal, and mixed, shall be equally divided between my children when my son William shall arrive at the age of twenty-one; in the mean time to be managed for their joint benefit by my sons, Thomas, James, and William, who I hereby appoint executors of this my will, and request no security may be required of them. My wife is provided for by law.

Witness my hand and seal this twenty-eighth day of January, eighteen hundred and twenty-seven.

THOMAS IRWIN. [SEAL.]

Signed, sealed, published, and delivered in presence of—
HENRY DAINGERFIELD,
WILLIAM HERBERT,
JOHN RICHARDS.

At a session of the orphan's court for the county of Alexandria, in the District of Columbia, the 5th day of February, 1827, this last will and testament of Thomas Irwin, deceased, was presented to the court by Thomas Irwin, jr., one of the executors therein named, and proved in due form of law by Henry Daingerfield and William Herbert, two of the subscribing witnesses to the same, and ordered to be recorded.

And the said executor having qualified thereto, letters testamentary were granted to him without security, as required by the testator.

Teste: A. MOORE, *Reg'r of wills.*
A copy—Teste: B. HOOE, *Reg'r of wills.*

DISTRICT OF COLUMBIA, *Alexandria county, sct:*

I, Bernard Hooe, register of wills for the county and District aforesaid, do hereby certify, that the foregoing is truly copied from the original which is on file, and duly recorded in the orphan's court for the county and district aforesaid.

In testimony whereof I have hereunto set my hand and affixed my [L. S.] seal of office this 5th day of May, 1845.

B. HOOE, *Reg'r of wills.*

DISTRICT OF COLUMBIA, *Alexandria county, sct:*

I, Christopher Neale, judge of the orphan's court for the county and district aforesaid, do hereby certify, that the foregoing attestation of Ber-

nard Hooe, register of wills for the aforesaid county of Alexandria, is in due form. Given under my hand this 5th day of May, 1845.

CHR. NEALE.

(For plan see original.)

Bond.

Know all men by these presents, that we, William H. Irwin and James Cary are held and firmly bound, unto George O. Dixion and John A. Dixion, in the full and just sum of five hundred dollars, to the payment whereof, well and truly to be made, we bind ourselves and our heirs, jointly and severally, firmly by these presents. Sealed with our seals and dated the 3d day of November, 1846.

Whereas, at a United States circuit court of the district of Columbia, continued and held for the county of Alexandria, the 31st day of October, 1846, in the suit of George O. and John A. Dixion, complainants, against William H. Irwin, defendant, it was ordered and decreed as follows by the court:

"This cause coming on to be heard on the original and amended bills of said complainants, the answer of the defendant, and the exhibits and proofs taken and filed therein by the parties respectively, and the court having read, heard, and considered the same, and having heard the arguments of counsel, and being fully satisfied that Thomas Irwin, the ancestor of the said defendant, did, in his lifetime, dedicate to the public use a highway passing along the eastern front of the said warehouse mentioned in said complainants' bill, and running from King street to Dock street, or Fitzgerald's alley, in the town of Alexandria, and that the same was used as a highway for many years before the filing of the said bill. That there was next to the said warehouse, and within the said highway, a footway about four feet wide, beyond and next to which was a highway for the passing and repassing of carts, carriages, drays and horses, and the same was commonly used by all persons having occasion to use the same. And being fully satisfied that the said defendant did, before the filing of the said bill, erect across the said highway a fence, which he hath continued to this day, fully obstructing the passage along the said highway; that the said fence is immediately adjacent to the east wall of the said house, between two of the windows in the said east wall, and close to the frame of one of the said windows; that the said fence was a special and material injury to the use and enjoyment of the said defendant's said warehouse, and is a continuing injury to the same; do, this 31st day of October, 1846, adjudge, order, and decree, that the injunction heretofore issued in this cause

adjudge,
his cause

be and the same is hereby made perpetual; and they do further order and direct, that the said defendant do forthwith take down and remove the said fence, and that he be, and he is hereby forever hereafter, so long as the saith footpath and highway shall be continued to be used as such, enjoined and prohibited from erecting or putting any obstruction in the said highway within the space of nineteen feet wide, measured east from the eastern wall of said warehouse of said complainants, and running from King street to Dock street, or Fitzgerald's alley, as it is indifferently called and known, which said nineteen feet is hereby declared to be the eastern limit of said highway, and said highway does extend no further east; and that the said defendant pay the costs of this suit, to be taxed by the clerk. From which decree the defendant prays an appeal to the Supreme Court of the United States, which is granted by the court upon his giving bond and security in the sum of five hundred dollars, to be approved by the court, or one of the judges thereof."

Now the condition of the above obligation is such, that if the said William H. Irwin shall prosecute his appeal, and pay all damages, costs, and charges that may be awarded against him, in case he shall fail therein, then the above obligation to be void, otherwise to remain in full force and virtue.

WM. H. IRWIN, [SEAL.]
JAMES CAREY. [SEAL.]

Signed, sealed, and delivered in presence of—
CHARLES C. SMOOT, witness,
JAMES IRWIN.

Approved, 9th Nov., 1846. J. S. MORSELL.

DISTRICT OF COLUMBIA,
Alexandria county, sct:

I, Cassius F. Lee, clerk of the United States circuit court of the District of Columbia, for Alexandria county, do hereby certify, that the foregoing is a true transcript of the record of the proceedings in a certain injunction suit lately depending in said court, in which George O. Dixion and John A. Dixion were complainants, and William H. Irwin was defendant, with all things touching the same, as fully as they exist among the records of my office.

In testimony whereof I hereto subscribe my name and affix the seal [L. S.] of said court this 6th day of February, A. D. 1847.

CASSIUS F. LEE, *C. C.*

Filed 9th Feb'y, 1847.